

No. 12454

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United States  
Court of Appeals  
For the Ninth Circuit.

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THE LONDON ASSURANCE, a corporation,  
Appellant,  
vs.

LOUIS P. LUTFY and BERTHA A. LUTFY,  
Husband and Wife,  
Appellees.

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Transcript of Record

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Appeal from the United States District Court  
District of Arizona.

FILED

APR - 5 1950

PAUL P. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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ATTORNEYS OF RECORD

KRAMER, MORRISON, ROCHE & PERRY,

309 First National Bank Building,  
Phoenix, Arizona,

Attorneys for Appellant.

STRUCKMEYER & STRUCKMEYER,

Luhrs Building,  
Phoenix, Arizona,

Attorneys for Appellee.

In the United States District Court  
For the District of Arizona

No. Civil 1173 Phx.

LOUIS P. LUTFY and BERTHA A. LUTFY,  
husband and wife,

Plaintiffs,

vs.

THE LONDON ASSURANCE, a corporation,  
Defendant.

### TRANSCRIPT ON REMOVAL

In the Superior Court of the State of Arizona  
In and for the County of Maricopa

No. 60158, Div. 3

LOUIS P. LUTFY and BERTHA A. LUTFY,  
husband and wife,

Plaintiffs,

vs.

THE LONDON ASSURANCE, a corporation,  
Defendant.

### COMPLAINT

The plaintiffs allege:

#### I.

The plaintiffs are husband and wife and are residents of Maricopa County, Arizona; the defendant,

during all times mentioned herein, was and now is a corporation organized and existing under and by virtue of an English Royal Charter, and having its principal place of business in the City of London, England. The defendant is permitted to and at all times herein mentioned was permitted to write insurance upon automobiles in the State of Arizona.

## II.

On the 19th day of September, 1947, in Phoenix, Arizona, the defendant undertook to insure, and did insure, the plaintiffs against any loss arising from the theft of one certain automobile described as follows:

1947 Lincoln Continental C o n v e r t i b l e Coupe Serial Number H-150200, Motor Number H-150200 and charged to the plaintiffs, and received therefrom, the sum of \$159.00 as and for premium charged for the said insurance undertaken.

The said policy contained the following conditions, to-wit: That the property insured under said policy was of the value of \$5,420.00 on the date on which the said policy issued and that in case of total loss the defendant would pay to the plaintiffs the actual cash value of the said automobile. The said policy included also equipment carried in the said automobile as part of the normal equipment which said equipment on the date hereinafter alleged was of the reasonable value of \$77.00.

## III.

On or about the 28th day of October, 1947, the said automobile was stolen from the possession of the plaintiffs and has not been recovered by the plaintiffs and the plaintiffs have thereby been permanently deprived of the use and enjoyment of said motor vehicle which upon the date given above was of a value in excess of \$5,420.00. By the said policy the defendant undertook and agreed to reimburse the insured for expenses not exceeding \$5.00 for any one day or totaling \$150.00 for rental of a substitute automobile, including taxi cabs. The plaintiffs have incurred expenses in excess of \$150.00 for rental of substitute automobiles, including taxi cabs since the said loss.

On or about the 28th day of October, 1947, and while the said policy was in full force and effect, the said automobile and its entire equipment, insured as aforesaid, while in the City of Phoenix, Maricopa County, Arizona, were totally loss by the theft thereof by persons other than those in the employment, service or household of the plaintiffs.

## IV.

The plaintiffs have done and performed all of the conditions of the insurance policy between the parties as required by them and the defendant has notified the plaintiffs that the defendant does not intend to pay and will not pay the liability incurred upon the said policy of insurance, and will pay nothing on account of said policy.

Wherefore, the premises considered, plaintiffs pray judgment against the defendants in the sum of \$5,647.00 with interest at the rate of 6% thereon, and the further sum of \$1,500.00 as and for attorneys' fees, together with their costs herein incurred.

STRUCKMEYER &  
STRUCKMEYER,  
By JAMES A. STRUCKMEYER,  
Attorneys for Plaintiffs.

State of Arizona,  
County of Maricopa—ss.

Louis P. Lutfy, being first duly sworn upon his oath, deposes and says: That he is one of the plaintiffs in the above entitled matter and has read the above and foregoing complaint and knows the contents thereof and the matters alleged therein are true of his own knowledge, except those matters alleged upon information and belief, and as to those matters he believes them to be true.

LOUIS P. LUTFY,  
Plaintiff.

Subscribed and Sworn to before me this 23rd day of March, 1948.

[Seal] MARJORIE F. GOLDBERG,  
Notary Public.

My Commission expires October 22, 1948.

[Endorsed]: Filed Mar. 25, 1948.

[Title of Superior Court and Cause.]

## SUMMONS

(Copy)

The State of Arizona to the above named defendant, The London Assurance, a corporation, (serve member of the Corporation Commission).

You Are Hereby Summoned and required to appear and defend in the above entitled action in the above entitled court, within Twenty Days, exclusive of the day of service, after service of this summons upon you if served within the State of Arizona, or within Thirty Days, exclusive of the day of service, if served without the State of Arizona, and you are hereby notified that in case you fail so to do, judgment by default will be rendered against you for the relief demanded in the complaint.

The name and address of plaintiffs' attorneys: Struckmeyer & Struckmeyer, 207 Luhrs Building, Phoenix, Arizona.

Given under my hand and the seal of the Superior Court of the State of Arizona in and for the County of Maricopa, this . . . . day of March, 1948.

WALTER S. WILSON,  
Clerk.

[Seal] By ERNEST R. MORRIS,  
Deputy Clerk.



[Title of Superior Court and Cause.]

APPLICATION FOR SPECIAL APPOINTMENT TO SERVE PROCESS, AND ORDER OF APPOINTMENT

Now comes James A. Struckmeyer attorney for Plaintiff in the above entitled and numbered cause and making application for the appointment of Roger W. Perry for the purpose of serving process herein, says; that the said Roger W. Perry is a male citizen of the United States and a resident of the County of Maricopa, State of Arizona, of the age of twenty-one years and upwards, not interested in the above entitled cause and is competent to be a witness in said cause; that a substantial saving in travel fees will result.

Wherefore, James A. Struckmeyer, attorney as aforesaid, moves for an order of the court specially appointing the said Roger W. Perry the purpose of serving process in the above entitled and numbered cause.

Dated 26 March 1948, 194. . . .

JAMES A. STRUCKMEYER,  
Attorney for Plaintiff.

Upon the matter set forth in the application of James A. Struckmeyer, attorney for Plaintiff, duly filed herein on the 26th day of March, 1948.

On motion of James A. Struckmeyer attorney as

aforesaid, Roger W. Perry, be and he is hereby specially appointed for the purpose of serving process in the above entitled and numbered cause.

WALTER S. WILSON,  
Clerk.

[Seal] By CLIFFORD H. WARD,  
Deputy.

[Endorsed]: Filed Mar. 26, 1948.

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[Title of Superior Court and Cause.]

### AFFIDAVIT

State of Arizona,  
County of Maricopa—ss.

Roger W. Perry being first duly sworn deposes and says:

That he is a citizen of the United States; a resident of Maricopa County, State of Arizona; is over the age of twenty-one years, and is not interested in the above entitled cause.

That the within Summons was received by him on the 26th day of March, 1948, at the hour of 2:30 p.m.; that he personally served same on the 28th day of March, 1948, on The London Assurance,

(Corporation Commission, State of Arizona) being defendant named in said Summons, by delivering to said London Assurance personally in Maricopa County, Arizona, a true copy of said



Summons to which was attached a true copy of the complaint mentioned in said summons.

ROGER W. PERRY.

Subscribed and sworn to before me this 29th day of March, 1948.

[Seal]                      MARJORIE F. GOLDBERG,  
Notary Public.

My Commission expires Oct. 22, 1948.

[Endorsed]: Filed Mar. 31, 1948.

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[Title of Superior Court and Cause.]

NOTICE OF FILING PETITION  
AND BOND ON REMOVAL

To the Plaintiffs above named, and to Messrs. Struckmeyer & Struckmeyer, their Attorneys of Record:

You And Each Of You are hereby notified that the defendant, The London Assurance, a corporation, will on the 14th day of April, 1948, at the hour of nine-thirty o'clock in the forenoon thereof, file in the above numbered and entitled action its petition for the removal of said cause to the United States District Court for the District of Arizona, accompanied by a bond on removal conditioned according to the Act of Congress relating to removal

of causes, a copy of which such petition and bond is attached hereto and served upon you herewith.

KRAMER, MORRISON,  
ROCHE & PERRY,  
Attorneys for Defendant.  
By ALLAN K. PERRY.

Receipt of copy acknowledged.

[Endorsed]: Filed Apr. 14, 1948.

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[Title of Superior Court and Cause.]

### PETITION FOR REMOVAL

To the Honorable Superior Court of the State of  
Arizona, County of Maricopa, and the Judges  
Thereof:

Your petitioner, The London Assurance, comes now by its attorneys, Kramer, Morrison, Roche & Perry, and respectfully petitions and shows unto the Court as follows:

1. That the plaintiffs, Louis F. Lutfy and Bertha A. Lutfy are citizens and residents of the State of Arizona; that this defendant-petitioner is a corporation duly organized and existing under and by virtue of the laws of the Kingdom of Great Britain and is a corporate subject and resident of said Kingdom.

2. That the time within which this petitioning

defendant is required by the laws of the State of Arizona and the rules and practice of this Court to move, answer, or otherwise plead in the above numbered and entitled suit has not yet expired, and this petitioning defendant has not filed any pleading or appeared in any way herein.

3. That by the complaint of plaintiffs on file herein, said plaintiffs seek judgment against the defendant in the sum of Five Thousand Six Hundred Forty-seven Dollars (\$5,647.00), which plaintiffs claim and assert the defendant owes to them by virtue of a written contract of insurance, and the further sum of Fifteen Hundred Dollars (\$1,500.00) as and for plaintiffs' attorneys' fees in said cause. This petitioning defendant denies that it is liable to the plaintiffs, or either of them, under the complaint as filed in the above numbered and entitled action, or at all, and does most respectfully show unto the Court that the amount in controversy in said action, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars (\$3,000.00), and that this is a suit of a civil nature between citizens and residents of the State of Arizona as plaintiffs and a subject and resident of the Kingdom of Great Britain as defendant.

4. This defendant-petitioner has made and does file herewith a bond in the sum of Two Hundred Fifty Dollars (\$250.00), with good and sufficient surety, conditioned upon its entering in the United States District Court for the District of Arizona,

within thirty days from the date of the filing of this petition, a certified copy of the record in this suit and its paying all costs that may be awarded by said District Court if it shall hold that this suit was wrongfully or improperly removed thereto.

Wherefore, this petitioning defendant prays that this Court proceed no further herein, except to approve and accept said bond and to cause the record herein to be removed to the United States District Court for the District of Arizona, as does the law require.

KRAMER, MORRISON,  
ROCHE & PERRY,

Attorneys for

Defendant-Petitioner.

By ALLAN K. PERRY.

State of Arizona,  
County of Maricopa—ss.

Allan K. Perry, being first duly sworn according to law, on oath deposes and says:

1. I am one of the attorneys for the defendant-petitioner in whose behalf the foregoing petition is filed;

2. Said defendant-petitioner is a corporation duly organized and existing under and by virtue of the laws of the Kingdom of Great Britain, and is a corporate resident and subject of said Kingdom;

3. There is no officer of said alien corporation within the State of Arizona;

4. I make this affidavit for and on behalf of said alien corporation, having been first thereunto duly authorized;

5. I have read the foregoing petition and know the contents thereof, and that each and all of the matters and things therein stated are true of my own knowledge.

ALLAN K. PERRY.

Subscribed and sworn to before me this 12th day of April, 1948.

[Seal]                    AMY SWEEM,  
Notary Public.

My commission expires May 29, 1948.

[Endorsed]: Filed Apr. 14, 1948.

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[Title of Superior Court and Cause.]

BOND ON REMOVAL

Know All Men By These Presents:

That The London Assurance, a corporation, as Principal, and Fidelity and Deposit Company of Maryland, a corporation duly organized and existing under and by virtue of the laws of the State of Maryland, and authorized to become and be sole surety upon bonds required in judicial proceedings within the State of Arizona and in the

United States District Court for the District of Arizona, as Surety, are held and firmly bound unto Louis P. Lutfy and Bertha A. Lutfy, husband and wife, in the penal sum of Two Hundred Fifty Dollars (\$250.00), lawful money of the United States, for the payment of which said sum well and truly to be made, said Principal binds itself and its successors and assigns, and said Surety binds itself and its successors, jointly and severally, firmly by these presents.

The Condition of this obligation is such that:

Whereas, the principal obligor has applied by petition to the Superior Court of the State of Arizona in and for the County of Maricopa for the removal of the above numbered and entitled cause therein pending to the United States District Court for the District of Arizona upon the grounds in said petition set forth,

Therefore, if the said Principal, The London Assurance, shall enter in said United States District Court for the District of Arizona, within thirty days from the date of the filing of its said petition for removal, a certified copy of the record of said Superior Court in the above numbered and entitled action and shall pay all costs that may be awarded by said District Court if said District Court shall hold that such suit was wrongfully or improperly removed thereto, then this obligation shall be void; otherwise, to remain in full force, effect and virtue.

Witness the corporate name of the principal obligor, by its duly authorized attorney, and the



corporate name and seal of the Surety, by its duly authorized attorney-in-fact, all this 13th day of April, 1948.

THE LONDON ASSURANCE.

By ALLAN K. PERRY,

Its Attorney.

Principal.

FIDELITY AND DEPOSIT

COMPANY OF MARYLAND,

[Seal] By /s/ C. A. DRUMMOND,

Its Attorney-in-Fact.

Surety.

[Endorsed]: Filed April 14, 1948.

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[Title of Superior Court and Cause.]

### ORDER FOR REMOVAL

The defendant, The London Assurance, having within the time prescribed by law filed its petition for the removal of the above numbered and entitled cause to the United States District Court for the District of Arizona, and having at the same time offered its bond in the sum of Two Hundred Fifty Dollars (\$250.00) with Fidelity and Deposit Company of Maryland, a corporation, as good and sufficient surety, pursuant to the statute and conditioned according to law,

Now, Therefore, this Court does hereby accept and approve said bond, and does hereby accept said petition, and

It Is Ordered that this cause be and it is hereby removed to the United States District Court for the District of Arizona, and that all other proceedings in this Superior Court be and the same are hereby stayed.

Done In Open Court this 14th day of April, 1948.

DUDLEY W. WINDES,  
Judge.

[Endorsed]: Filed April 14, 1948.

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[Title of Superior Court and Cause.]

THIS MATTER BEFORE THE HONORABLE  
DUDLEY W. WINDES, PRESIDING JUDGE

Comes now Allan K. Perry, of Kramer, Morrison, Roche & Perry, appearing as counsel on behalf of the Defendant.

It is ordered for removal of this cause to the United States District Court and staying all further proceedings in the Superior Court.

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[Title of Superior Court and Cause.]

State of Arizona,  
County of Maricopa—ss.

I, Walter S. Wilson, Clerk of the Superior Court of Maricopa County, State of Arizona, hereby certify the foregoing to be a full, true and correct copy of the record, and the whole thereof, in the



above entitled cause heretofore pending in the Superior Court of Maricopa County, Arizona, being cause No. 60158, wherein Louis P. Lutfy and Bertha A. Lutfy, husband and wife, were Plaintiffs and The London Assurance, a corporation, was Defendant, said record consisting of:

- Complaint .....filed March 25, 1948
- Affidavit .....filed March 31, 1948
- Application for Special Appointment  
to Serve Process and Order of  
Appointment .....filed March 26, 1948
- Notice of Filing Petition and  
Bond on Removal .....filed April 14, 1948
- Petition for Removal .....filed April 14, 1948
- Bond on Removal .....filed April 14, 1948
- Order for Removal .....filed April 14, 1948

and Minute Entry of April 14, 1948, granting Defendant’s motion for removal, all as appears in the files and of record in my office.

Attest my hand and Seal of said Court at Phoenix, County of Maricopa, State of Arizona, this 19th day of April, 1948.

[Seal] /s/ WALTER S. WILSON,  
Clerk of the Superior Court,  
Maricopa County, Arizona.

Transcript on Removal in the Superior Court of the State of Arizona in and for the County of Maricopa.

[Endorsed]: Filed May 7, 1948, U.S.D.C.

In the United States District Court for the  
District of Arizona

No. Civ. 1173 Phx.

LOUIS P. LUTFY and BERTHA A. LUTFY,  
husband and wife,

Plaintiffs,

vs.

THE LONDON ASSURANCE, a corporation,  
Defendant.

### AMENDED ANSWER

#### I.

Defendant admits the allegations contained in paragraph I of the plaintiffs' complaint.

#### II.

Defendant denies each and every allegation contained in paragraph II of the plaintiffs' complaint that is not herein expressly admitted. Defendant admits and alleges that on or about the 19th day of September, 1947 the defendant issued to the plaintiffs a certain policy of insurance wherein and whereby defendant did, subject to all of the terms and conditions in said policy contained, agree to indemnify plaintiffs for a term commencing the 19th day of September, 1947 and expiring by limitation the 19th day of September, 1948 against loss or damage to the plaintiffs resulting directly from the theft of a certain Lincoln Continental Con-

vertible Coupe, Year Model 1947, Motor No. H-150200, to the extent of the actual cash value of such automobile or of the damage thereto resulting from theft as aforesaid, and as in said policy defined, as of the day of the date of such loss or damage.

III.

Defendant denies each and every allegation contained in paragraph III of the plaintiffs' complaint.

IV.

Defendant admits the allegation contained in paragraph IV of the plaintiffs' complaint to the effect that defendant denies it is liable to the plaintiffs in any sum whatsoever under the claim by plaintiffs asserted, or at all. It denies each and every allegation contained in paragraph IV of said complaint that is not herein expressly admitted.

V.

Further answering said complaint, defendant alleges:

1. That at and prior to the issuance of the policy of insurance referred to in the foregoing paragraph II hereof and as an inducement to the defendant to issue the same, the plaintiffs, and each of them, represented and warranted to this defendant:

a. That the automobile for which such insurance was desired was of the year model 1947 and had been actually manufactured that year.

b. That plaintiffs had purchased said automobile in September, 1947 and that said automobile was a new car when they had so purchased it.

c. That plaintiffs had paid the sum of Five Thousand Four Hundred Twenty Dollars (\$5420.00) for such automobile.

d. That plaintiffs were the sole and unconditional owners of said automobile, had good title thereto, and were lawfully in the possession of and entitled to the use of said automobile.

2. Defendant believed such representations and warranties, and each thereof, and relied upon them and relied upon each thereof, and issued said policy of insurance induced and, believing and relying upon said representations and warranties and each thereof.

3. Each and all of said representations and warranties so made by the plaintiffs to the defendant was false, fraudulent, and untrue, and said plaintiffs, and each of them, well knew at the time said representations and warranties were by them made, as aforesaid, and at all times herein mentioned, that each and all of said representations and warranties were false and untrue.

4. Each and all of said false and fraudulent representations and warranties were made by the said plaintiffs, and by each of them with the design and purpose of deceiving and defrauding this defendant and of obtaining a contract of insurance

to which they, the said plaintiffs, were not, nor was either of them, entitled.

5. In truth and in fact at the time said representations and warranties were made and at all times herein mentioned, said automobile was not of the year model 1947 and had not actually been manufactured that year but was of the year model 1946 and had been manufactured that year, and these facts were well-known to the plaintiffs, and to each of them, at the time of their false and fraudulent representations and warranties, as aforesaid, and at all times herein mentioned.

6. In truth and in fact at the time said representations and warranties were made, said automobile had not been purchased by the plaintiffs in September, 1947 and it was not a new car when they took possession of it, but the plaintiffs had acquired the possession of said car after it had been owned, operated, driven and used by divers and sundry persons, and the plaintiffs had acquired the possession of said car from some person to defendant unknown, but who was not the owner of said automobile, and these facts were well-known to the plaintiffs and each of them, at the time of their false and fraudulent representations and warranties, as aforesaid, and at all times herein mentioned.

7. In truth and in fact, plaintiffs had not paid the sum of Five Thousand Four Hundred and Twenty Dollars (\$5420.00) or any other sum for the purchase of said automobile but had acquired



the possession thereof through the payment of some sum, the exact amount being to defendant unknown, to some person then having the possession of said automobile but who was not the owner thereof, and these facts were well known to the plaintiffs and each of them, at the time of their false and fraudulent representations and warranties and at all times herein mentioned.

8. In truth and in fact, the plaintiffs were not the sole owners of said automobile or the unconditional owners of said automobile and they did not have good or any title thereto, and they were not, nor was either of them, lawfully in the possession of said automobile or entitled to the use thereof and these facts were well known to the plaintiffs at the time of their said false and fraudulent representations and warranties and at all times herein mentioned.

#### VI.

Further answering said complaint defendant alleges that the plaintiffs, and each of them, knows and has known at all times in their said complaint mentioned where said automobile is located and in whose possession the same is and that the person presently having the possession of said automobile is lawfully entitled to the same and has been so lawfully entitled to the possession of said automobile during all times that he has held the same.

#### VII.

Further answering said complaint, defendant alleges that when said policy of insurance was so

applied for by the plaintiffs and issued by the defendant, as aforesaid, there was a chattel mortgage lien upon said motor vehicle, in favor of the Exchange National Bank, Chicago, Illinois, and this fact was by the plaintiffs willfully concealed and withheld from the knowledge of the defendant.

### VIII.

Further answering said complaint, defendant alleges that when said policy of insurance was so applied for by plaintiffs and issued by the defendant, as aforesaid, plaintiffs well knew (a) that they had acquired the possession of said car within the State of Illinois, (b) that said car was then registered within the State of Illinois, (c) that the plaintiffs, in violation of the provisions of Section 66-205(c) of the Arizona Code of 1939, did not surrender to the Motor Vehicle Division of the Arizona Highway Department the number plates assigned to such vehicle in Illinois, nor did they surrender the Illinois registration card or the Illinois certificate of title, nor did they furnish any evidence of ownership or right to possession in the plaintiffs, but on the contrary the said plaintiffs did remove certain Arizona license number plates from another motor vehicle and place the same upon the automobile described in the policy of insurance here sued upon, and did operate and drive said automobile, within the State of Arizona, in violation of the laws of the State of Arizona, with said license number plates affixed thereto that had been by

plaintiffs removed from such other motor vehicle; and the plaintiffs willfully concealed each and all of such facts from the defendant.

Wherefore, defendant demands judgment, that plaintiffs take nothing, and that the defendant recover its costs.

KRAMER, MORRISON,  
ROCHE & PERRY,  
Attorneys for Defendant,

By /s/ ALLAN K. PERRY.

[Endorsed]: Filed Feb. 8, 1949.

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In the United States District Court for the  
District of Arizona

Honorable Dave W. Ling, United States District judge, presiding.

[Title of Cause.]

MINUTE ENTRY OF MONDAY,  
FEBRUARY 10, 1949

Allan K. Perry, Esq., appears as counsel for the defendant and further pretrial conference is had as follows:

Defendant's Exhibit 1, Depositions of Dr. Louis P. Lutfy and Bertha A. Lutfy, is now admitted in evidence.

Defendant's Exhibit 2, Photostatic copy of record of Secretary of State of State of Illinois, (8 documents), is now admitted in evidence.



Defendant's Exhibit 3, Photostatic copy of record of Motor Vehicle Commissioner of State of Florida (6 documents), is now admitted in evidence.

It Is Ordered that the record show this case is submitted and taken under advisement.

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PLAINTIFF'S EXHIBIT A

Standard Automobile Policy  
Stock Company

Expires September 19, 1948 at 12 :01 A.M. (Standard Time).

Automobile Lincoln      No. H 150200

Amount, \$ ACV

Premium, \$159.00

Insured Dr. Louis P. Lutfy and Bertha A. Lutfy

No. 148323

The London Assurance  
A.D. 1720

Third Century of Active Business

Pacific Coast Branch  
369 Pine Street, San Francisco

---

James C. Hitt, Manager

Chas. G. Landresse, Manager Automobile Department

Bailey & Wamsley, General Agents  
406 Goodrich Bldg.      Phoenix, Arizona

Issued thru Al Lindsey Agency  
206 W. Adams St.      Phoenix, Ariz.  
Bus. Ph. 4-2561      Res. Ph. 4-7841

Please Read Your Policy

## Plaintiff's Exhibit A—(Continued)

The London Assurance

Standard Automobile Policy

No. 148323

(A stock insurance company, herein called the company)

## Declarations

## Item 1.

Name of Insured Dr. Louis P. Lutfy and Bertha A. Lutfy

Address 301 West McDowell Road, Phoenix, Arizona

Garage: The automobile will be principally garaged in the above town or city, county and state, unless otherwise stated herein: No exceptions

Occupation of the insured is Physician

Name and address of employer —

Except with respect to bailment lease, conditional sale, mortgage or other encumbrance the insured is the sole owner of the automobile, except as herein stated: No exceptions

Loss Payee: Any loss hereunder is payable as interest may appear to the insured and Insured Only.

## Item 2.

Policy Period: From September 19, 1947 to September 19, 1948 12:01 A.M., standard time at the address of the insured as stated herein.

## Item 3.

In consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy, the company agrees to pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, sustained during the policy period, with respect to such and so many of the following coverages as are indicated by specific premium charge or charges:

A—Comprehensive—Loss of or damage to the Automobile, Except by Collision but including Fire, Theft and Windstorm. Actual Cash Value. Premium \$53.00

B-1—Collision or Upset. Actual Cash Value less \$50.00, which deductible amount shall be applicable to each Collision or Upset. Premium \$106.00

Plaintiff's Exhibit A—(Continued)

B-2—Convertible Collision or Upset—nil

C—Fire, Lightning and Transportation—nil

D—Theft (Broad Form)—nil

E—Combined Additional Coverage—nil

Total Premium \$159.00.

Item 4.

Description of the automobile and facts respecting its purchase by the insured:

Year of Model 1947

Trade Name Lincoln

Body Type Continental Conv. Coupe

Serial Number H-150200; Motor Number same

Number of Cylinders 12

Actual Cost When Purchased Including Equipment \$5420.00

Purchased Month 9, Year 1947, New, Encumbrance None.

Item 5.

The purposes for which the automobile is to be used are Business and Pleasure.

Item 6.

Territory, Purposes of Use: This policy applies only while the automobile is within the United States of America, its territories or possessions, Canada or Newfoundland, or is being transported between parts thereof, and is owned, maintained and used for the purposes stated as applicable hereto.

Countersigned: September 19, 1947, at Phoenix, Arizona.  
Al Lindsey Agency, By Al Lindsey, Agent.

(Space for Attachment of Endorsements)

Insuring Agreements

(Subject to the limits of liability, exclusions, conditions and other items of the policy.)

Insurance Coverages Defined

Coverage A—Comprehensive—Loss of or Damage to the Automobile, Except by Collision

Any loss of or damage to the automobile except loss caused by

### Plaintiff's Exhibit A—(Continued)

collision of the automobile with another object or by upset of the automobile or by collision of the automobile with a vehicle to which it is attached. Breakage of glass and loss caused by missiles, falling objects, fire, theft, explosion, earthquake, windstorm, hail, water, flood, vandalism, riot or civil commotion shall not be deemed loss caused by collision or upset.

#### Coverage B-1—Collision or Upset

Loss of or damage to the automobile caused by collision of the automobile with another object or by upset of the automobile.

#### Coverage B-2—Convertible Collision or Upset

Loss of or damage to the automobile caused by collision of the automobile with another object or by upset of the automobile. Upon the occurrence of the first loss for which payment is sought hereunder the insured shall pay to the company the additional payment stated in the declarations. Loss caused by collision or upset occurring prior to the first loss for which payment is sought hereunder is not covered.

#### Coverage C—Fire, Lightning and Transportation

Loss of or damage to the automobile caused (a) by fire or lightning, (b) by smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the automobile is located, or (c) by the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported on land or on water.

#### Coverage D—Theft (Broad Form)

Loss of or damage to the automobile caused by theft, larceny, robbery or pilferage.

#### Coverage E—Combined Additional Coverage

Loss of or damage to the automobile caused by windstorm, earthquake, explosion, hail, external discharge or leakage of water, flood or rising waters, riot or civil commotion, or the forced landing or falling of any aircraft or of its parts or equipment.

#### Special Provisions

##### Loss of Use by Theft—Rental Reimbursement

The company, following a theft covered under this policy, shall

### Plaintiff's Exhibit A—(Continued)

reimburse the insured for expense not exceeding \$5 for any one day nor totaling more than \$150 or the actual cash value of the automobile at time of theft, whichever is less, incurred for the rental of a substitute automobile, including taxicabs.

Reimbursement is limited to such expense incurred during the period commencing seventy-two hours after such theft has been reported to the company and the police and terminating, regardless of expiration of the policy period, on the date the whereabouts of the automobile becomes known to the insured or the company or on such earlier date as the company makes or tenders settlement for such theft.

Such reimbursement shall be made only if the stolen automobile was a private passenger automobile not used as a public or livery conveyance and not owned and held for sale by an automobile dealer.

#### General Average and Salvage Charges

The company, with respect to such transportation insurance as is afforded by this policy, shall pay any general average and salvage charges for which the insured becomes legally liable.

#### Automatic Insurance for Newly Acquired Automobiles

If the insured who is the owner of the automobile acquires ownership of another automobile and so notifies the company within thirty days following the date of its delivery to him, such insurance as is afforded by this policy applies also to such other automobile as of such delivery date :

(a) if it replaces an automobile described in this policy, but only to the extent the insurance is applicable to the replaced automobile, or

(b) if it is an additional automobile and if the company insures all automobiles owned by the insured at such delivery date, but only to the extent the insurance is applicable to all such previously owned automobiles ;

provided, when a limit of liability is expressed in the declarations as actual cash value, such limit shall apply to such other automobile, and when a limit of liability is so expressed as a stated amount, such limit shall be replaced by the actual cash value of such other automobile, but any deductible amount so expressed shall apply in either case.



## Plaintiff's Exhibit A—(Continued)

This automatic insurance does not apply: (a) to any loss against which the insured has other valid and collectible insurance, or (b) except during the policy period, but if such delivery date is prior to the effective date of this policy, the insurance applies as of such effective date, or (c) to automobiles owned and held for sale by automobile dealers.

The insured shall pay any additional premium required because of the application of the insurance to such other automobile. The insurance terminates upon the replaced automobile on such delivery date.

## Expense Reimbursement

As respects such insurance afforded by the other terms of this policy the company shall reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the company's request.

## Exclusions

This policy does not apply:

(a) under any of the coverages, while the automobile is used as a public or livery conveyance unless such use is specifically declared and described in this policy and premium charged therefor;

(b) under any of the coverages, while the automobile is subject to any bailment lease, conditional sale, mortgage or other encumbrance not specifically declared and described in this policy;

(c) under any of the coverages, to loss due to war, whether or not declared, invasion, civil war, insurrection, rebellion or revolution or to confiscation by duly constituted governmental or civil authority;

(d) under any of the coverages, to any damage to the automobile which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage is the result of other loss covered by this policy;

(e) under any of the coverages, to robes, wearing apparel or personal effects;

(f) under any of the coverages, to tires unless damaged by fire or stolen or unless such loss be coincident with other loss covered by this policy;

Plaintiff's Exhibit A—(Continued)

(g) under coverages A and D, to loss due to conversion, embezzlement or secretion by any person in lawful possession of the automobile under a bailment lease, conditional sale, mortgage or other encumbrance;

(h) under coverages B-1 and B-2, to breakage of glass if insurance with respect to such breakage is otherwise afforded;

(i) under coverages B-1, B-2, C and D, to loss due to riot or civil commotion.

(j) under any of the coverages while the automobile is used in any illicit trade or transportation.

Conditions

1. Insured's Duties When Loss Occurs

When loss occurs, the insured shall:

(a) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the insured's failure to protect shall not be recoverable under this policy; reasonable expense incurred in affording such protection shall be deemed incurred at the company's request;

(b) give notice thereof as soon as practicable to the company or any of its authorized agents and also, in the event of theft, larceny, robbery or pilferage, to the police but shall not, except at his own cost, offer or pay any reward for recovery of the automobile;

(c) file proof of loss with the company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, in the form of a sworn statement of the insured setting forth the interest of the insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at time of loss, the amount, place, time and cause of such loss, the amount of rental or other expense for which reimbursement is provided under this policy, together with original receipts therefor, and the description and amounts of all other insurance covering such property.

Upon the company's request, the insured shall exhibit the damaged property to the company and submit to examinations under oath by anyone designated by the company, subscribe the same and produce for the company's examination all pertinent records and sales invoices, or certified copies if originals be lost, permit-

## Plaintiff's Exhibit A—(Continued)

ting copies thereof to be made, all at such reasonable times and places as the company shall designate.

## 2. Appraisal

If the insured and the company fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty days after receipt of proof of loss by the company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then, on the request of the insured or the company, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his or its chosen appraiser and shall bear equally the other expenses of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

## 3. Limit of Liability; Settlement Options; No Abandonment

The limit of the company's liability for loss shall not exceed the actual cash value of the automobile, or if the loss is a part thereof the actual cash value of such part, at time of loss nor what it would then cost to repair or replace the automobile or such part thereof with other of like kind and quality, with deduction for depreciation, nor the applicable limit of liability stated in the declarations.

The company may pay for the loss in money or may repair or replace the automobile or such part thereof, as aforesaid, or may return any stolen property with payment for any resultant damage thereto at any time before the loss is paid or the property is so replaced, or may take all or such part of the automobile at the agreed or appraised value but there shall be no abandonment to the company.

## 4. Automatic Reinstatement

When the automobile is damaged, whether or not such damage is covered under this policy, the liability of the company shall be



Plaintiff's Exhibit A—(Continued)

reduced by the amount of such damage until repairs have been completed, but shall then attach as originally written without additional premium.

5. Payment for Loss; Action Against Company

Payment for loss may not be required nor shall action lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy nor until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy.

No suit or action on this policy or for the recovery of any claim hereunder shall be sustainable in any court of law or equity unless the assured shall have fully complied with all the foregoing requirements nor unless commenced within twelve (12) months next after the happening of the loss; provided that where such limitation of time is prohibited by the laws of the state wherein this policy is issued, then and in that event no suit or action under this policy shall be sustainable unless commenced within the shortest limitation permitted under the laws of such state.

6. Other Insurance

If the insured has other insurance against a loss covered by this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

7. No Benefit to Bailee

The insurance afforded by this policy shall not enure directly or indirectly to the benefit of any carrier or bailee liable for loss to the automobile.

8. Assistance and Cooperation of the Insured

The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense.

## Plaintiff's Exhibit A—(Continued)

## 9. Subrogation

In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

## 10. Automobile Defined; Trailers; Two or More Automobiles

Except where specifically stated to the contrary, the word "automobile" wherever used in this policy shall mean the motor vehicle, trailer or semitrailer described in this policy. The word "automobile" shall also include its equipment and other equipment permanently attached thereto. The word "trailer" shall include semitrailer.

When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each and a motor vehicle and a trailer or trailers attached thereto shall be held to be separate automobiles as respects limits of liability, including any deductible provisions.

## 11. Changes

Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

## 12. Assignment

Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy, unless canceled, shall, if written notice be given to the company within sixty days after the date of such death or adjudication, cover the insured's legal representative as the insured.

Plaintiff's Exhibit A—(Continued)

13. Cancellation

This policy may be canceled by the insured by surrender thereof or by mailing to the company written notice stating when thereafter such cancellation shall be effective. This policy may be canceled by the company by mailing to the insured at the address shown in this policy written notice stating when not less than five days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the insured or by the company shall be equivalent to mailing.

If the insured cancels, earned premiums shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premiums shall be computed pro rata. Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due to the insured.

14. Fraud and Misrepresentation

This policy shall be void if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof or in case of any fraud, attempted fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

15. Terms of Policy Conformed to Statute

Terms of this policy which are in conflict with the statutes of the State wherein this policy is issued are hereby amended to conform to such statutes.

16. Declarations

By acceptance of this policy the insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

In Witness Whereof, the company has caused this policy to be

## Plaintiff's Exhibit A—(Continued)

executed and attested, but this policy shall not be valid unless countersigned on the declarations page by a duly authorized agent of the company.

Al Lindsey Agency  
James Hitt,

Manager and attorney-in-fact.

September 19, 47, Phoenix, Arizona.

Admitted and Filed Feb. 7, 1949.

Receipt for Cancellation attached (not filled out).

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 DEFENDANT'S EXHIBIT No. 1

In the District Court of the United States for the  
District of Arizona.

No. Civ. 1173-Phx.

LOUIS P. LUTFY, et ux,

Plaintiff,

vs.

THE LONDON ASSURANCE, a corporation,  
Defendant.

Deposition of Dr. Louis P. Lutfy

The depositions of the plaintiffs, Dr. Louis P. Lutfy and Bertha A. Lutfy, husband and wife, were taken pursuant to notice on file in the above entitled court, commencing at the hour of 10:30 o'clock A.M. on the 11th day of December, 1948, at 309 First National Bank Building, Phoenix, Arizona.

It was further stipulated that said depositions be signed by the deponents on the last page thereof, certifying as to the correctness of their testimony.

Defendant's Exhibit No. 1—(Continued)

The plaintiffs were present and represented by Mr. James Struckmeyer, of Messrs. Struckmeyer & Struckmeyer.

The defendant was represented by its attorney, Mr. Allan K. Perry, of Messrs. Kramer, Morrison, Roche & Perry.

The following proceedings were had:

DR. LOUIS P. LUTFY

was called as a witness by the defendant for cross-examination under the Statute, and being first duly sworn, testified as follows:

Cross-Examination

By Mr. Perry:

Q. Your name is Louis P. Lutfy?

A. Yes, sir.

Q. You are a physician and surgeon here in Phoenix?      A. Yes.

Q. Where do you live, Dr. Lutfy?

A. I live at 714 West Maryland Avenue.

Q. Phoenix?      A. Yes, sir.

Q. You are one of the plaintiffs in this suit?

A. Yes, sir.

Q. And with respect to the insurance policy that you are bringing this suit on, did you order that from the Company or did Mrs. Lutfy?

A. No, I ordered that.

Q. From what agent did you order it?

A. From Al Lindsey.



Defendant's Exhibit No. 1—(Continued)  
(Deposition of Dr. Louis P. Lutfy.)

Q. Was that by a written order or by conversation?  
A. No, it was over the telephone.

Q. Was that on or about the day that the policy was issued, do you recall?

A. Let's see the policy.

(The policy was handed to the witness by Mr. Struckmeyer.)

A. I ordered the insurance on September 19th, 1947, and the policy is dated the same date, but I did not receive it until one or two weeks later.

Q. (By Mr. Perry): And what information did you give Al Lindsey with respect to the policy when you ordered it?

A. I gave him the year number, the motor and serial number, and the cost.

Q. What year model did you tell him it was?

A. '47.

Q. Did you later find out it was a '46?

A. No, I am not sure whether it is a '46 or not, but I am still under the impression that it is a '47 automobile, because that is the number that is on the certificate of title.

Q. In any event, you told him it was a '47 model?

A. Yes.

Q. And did you tell him when you had bought it?  
A. Yes.

Q. And what did you tell him with respect to that?  
A. It was September 19th, 1947.

Defendant's Exhibit No. 1—(Continued)  
(Deposition of Dr. Louis P. Lutfy.)

Q. And did you tell him whether it was new or used when you bought it?

A. Yes, I told him it was new.

Q. And did you tell him how much you had paid for it? A. Yes, the cost was \$5420.

Q. \$5420? A. That is right.

Q. That is what you told Lindsey when you bought it? A. Yes.

Q. Was there anything said about whether or not there were any liens on it or whether it was your sole property?

A. Nothing was said about that, but I told him it was my sole property.

Q. That is, yours and Mrs. Lutfy?

A. Yes.

Q. And you said something about the certificate of title a minute ago. What certificate of title did you refer to?

A. That is the certificate of title that my wife received when she bought the automobile.

Q. Do you have that, Doctor?

A. No, I don't.

Q. Where is it, do you know?

A. She gave it to a man by the name of Marciano.

Mr. Struckmeyer: Pardon me for interrupting. Dr. Lutfy, you only testify as to those things which you know of your own knowledge. You can't say



Defendant's Exhibit No. 1—(Continued)  
(Deposition of Dr. Louis P. Lutfy.)

what Mrs. Lutfy did unless you know personally that she did it.

A. I can't answer that question?

Mr. Struckmeyer: That is right.

Mr. Perry: That Marciano that you speak of is M-a-r-c-i-a-n-o? Is that right?

A. Well, he says I can't answer that question.

Q. All right, okay. You don't know Marciano at all, do you? A. No.

Q. Did you ever see that certificate of title with respect to this particular automobile? A. No.

Q. You never had an Arizona certificate of title for it? A. No.

Q. Or a certificate of title from any other state issued to you? A. No.

Q. Now, you said a few minutes ago that you didn't know whether the car was a '46 or '47, is that true? A. As far as I know, it is a '47.

Q. And what do you base that statement on, Doctor?

A. That information is the information that I obtained from my wife when she called me and she got that off from the title.

Q. You made no inquiry to ascertain if the motor number or serial number indicated a '46 or '47 car?

A. I checked the motor over with Mr. Stephens of the Stephens—of the Lincoln-Mercury at Phoenix, and he says there is only one model Conti-

Defendant's Exhibit No. 1—(Continued)

(Deposition of Dr. Louis P. Lutfy.)

mental, a few of them were made in '46 and a few were made in '47, and a few were made in '48, and that that they are all exactly identical, the only difference is that between certain numbers they designate a certain car as a '46 and between other numbers '47, and between other numbers it was a '48. Most of those cars were made in '47. There were few '46's and a very few '48's.

Q. When did you see this particular car, Doctor?

A. I saw this particular car on—when did you—

Mrs. Lutfy: Oh—

Mr. Struckmeyer: Now, wait a minute, Mrs. Lutfy, you can't tell him anything either.

Mr. Perry: About when, as nearly as you can recall?

A. Well, it took her about five or six days to make the trip from Chicago to Phoenix.

Q. Probably it would be somewhere around the 25th of September, 1947?

A. That is right, yes.

Q. Now, at the time you ordered the insurance policy the car was not in Arizona, was it, so far as you know?      A. No, it was not.

Q. And in order to conserve your time and ours too, would you just give us, in your own words, the history of the transaction whereby you acquired this car. That may not be a proper question, but if you don't object to it—

Defendant's Exhibit No. 1—(Continued)  
(Deposition of Dr. Louis P. Lutfy.)

Mr. Struckmeyer: I'd prefer Mrs. Lutfy answering that.

Mr. Perry: Well, I mean as far as the Doctor knows.

Mr. Struckmeyer: As far as he knows personally, yes, that is all right.

Mr. Perry: Yes.

A. Well——

Mr. Perry: What I mean by that, Doctor, is just what you had to do with it.

A. Yes. I was contacted at various times by a used car dealer from whom I previously purchased a Ford car, who were doing business in Phoenix under the name of Chadwick and Walden, and they stated they would be able to obtain an automobile for me, a very new Lincoln Continental off the showroom floors in Chicago, for \$5900, and first we wanted to make arrangements to have the car shipped by railway and purchase it here, but due to the cost of shipping it, it was decided that I'd buy the car here through them, giving them a check, making the check payable to Consolidated Motors in Tucson, and the check would be postdated about three or four days after the date that the car was bought on so that my wife could go over and view it and see if it was actually a new automobile and whether it was actually in good condition, and if it was, she would telephone me and then they could

Defendant's Exhibit No. 1—(Continued)  
(Deposition of Dr. Louis P. Lutfy.)

cash the check and she could take delivery of the car.

Mr. Perry: Let me interrupt you just a minute there. This Chadwick—

A. Chadwick and Walden.

Q. Will you spell those names?

A. C-h-a-d-w-i-c-k and W-a-l-d-e-n.

Q. They were used car dealers at Phoenix, were they? A. Yes.

Q. Well, then, I don't quite understand, what was the Consolidated Motors in Tucson, what was their connection with it?

A. All right. Well, all right. This is the way it worked: Chadwick and Walden was informed by Consolidated Motors in Tucson that they knew where an automobile could be purchased, and the Consolidated Motors in Tucson got their information from a firm in El Paso, and each one of these people were going to receive a commission on the deal.

Q. Well, was that H. J. Chadwick, do you know?

A. I don't know.

Q. Well, all right. Do you know if Walden's name is Bert Walden? A. Yes.

Q. Which one did you deal with, Doctor?

A. Most of the business was done with Mr. Walden. However, they both came out to the house that evening and received the check.

Q. Both of them came out to your house?

Defendant's Exhibit No. 1—(Continued)  
(Deposition of Dr. Louis P. Lutfy.)

A. Yes.

Q. And about when was that?

A. That was September 17th or 18th.

Q. And you gave them a check for how much money?      A. \$5900.

Q. And that was payable to the Consolidated Motors at Tucson?      A. That is right.

Q. Then go ahead and tell what happened.

A. Okay. When she got back there—no, she called me and stated that she had arrived there and that she had contacted Mr. Marciano—they gave us the name and the telephone number of the man she was supposed to contact, and he was going to take her down to the Chicago Sales Corporation, which was the Lincoln-Mercury dealer in Chicago, to see the automobiles. Well, she called in the afternoon before and stated she was going the next morning to see the automobiles and after talking to Mr. Marciano, he suggested—he asked her what she was going to pay for the car, and she said \$5900. He said, “Well, I am only giving 56—\$5400 for it.” He said, “They are making \$500 on you.” He says, “I will just as soon get it for you direct.” He said, “However, I have done business with them before, and the best thing for you to do is just telephone your husband and tell them that you are going to buy the car someplace else and in that way I will get it for you direct,” so that is what we did.

Q. Mrs. Lutfy then telephoned you?



Defendant's Exhibit No. 1—(Continued)

(Deposition of Dr. Louis P. Lutfy.)

A. Telephoned me and said she was going out to see the cars the next day, but that the price he was selling it for was \$5400, and that they were going to make \$500 commission on the deal.

Q. You didn't go back to Chicago on the deal at all, did you?

A. No. So then I sent her a Postal money order for the amount of \$5400.

Q. Was that a Postal money order or a Western Union?

A. That was a Western Union money order dated September 18th, 1947, in the amount of \$5600.

Q. And that was payable to Mrs. Lutfy?

A. Mrs. Tiny Lutfy, that is right.

Q. You wired that on the 18th?

A. I wired that on the evening of the 18th and she received it on the 19th.

Q. Then did you hear any more from Mrs. Lutfy concerning the purchase of this car?

A. Yes. She called me up and gave me—she called me up the next day and said she had bought the automobile and she gave me the motor number and serial number, and I called up Mr. Lindsey and had the car covered with insurance.

Q. Then did anything further transpire that you know of between that time and the time Mrs. Lutfy brought the car to Phoenix?

A. No. We covered it with insurance and she

Defendant's Exhibit No. 1—(Continued)

(Deposition of Dr. Louis P. Lutfy.)

drove it, and it took her about five or six days to get to Phoenix.

Q. Then I think you told us it was probably around the 25th, somewhere, of September, when she brought the car here? A. That is right.

Q. Did you examine it at that time?

A. Yes.

Q. And were you able to tell from your examination whether it was a new or used car?

A. Well, it looked like a new automobile to me. There was no mileage on it except the mileage that she had used in driving it out here, and I got in it and examined it, and as far as I could tell, it was a new car.

Q. Did you have anybody else make an examination of it for you?

A. No, I didn't. Mr. Chadwick, he looked it up in his little book, he looked up the number in his little book, and he said that particular number was at the tail end of the '46's

Q. Now, what, if anything, did you do toward getting a certificate of title for it?

A. Well, I wrote to Mr. Marciano and told him I had not yet received the certificate of title, I was waiting for it, and he stated he had just gotten it back from Springfield and wanted to know if the paper should be in my name or Mrs. Lutfy's name, or in both names, that it could not be issued in my



Defendant's Exhibit No. 1—(Continued)  
(Deposition of Dr. Louis P. Lutfy.)

name, and I told him to go ahead and issue it, and he was sending the title.

Q. When was that that you wrote to him?

A. October 11th, 1947.

Q. Do you have a copy of the letter, Doctor?

A. Copy of the letter was addressed to the Motor Vehicle Department, Springfield, Illinois.

“Dear Sirs: Please register Lincoln convertible cabriolet, Serial and Motor No. H-150,200 in the name of Louis P. Lutfy,” and I mailed that to Mr. Marciano at 7925 South Trimble Avenue, Chicago, Illinois, and he was going to send it on in to the Motor Vehicle Department and have it transferred into my name.

Q. Then you received an answer from him, did you?

A. Well, a part of this was contacted over the telephone and a part of it was by mail.

Q. Well, did you get a written answer from Marciano?

A. No, I didn't get a written answer to this.

Q. Did he call you?

A. I talked to him on the telephone later, and he said he was taking care of it, and I would receive it.

Q. And that would be some time after October 11th?

A. Yes.

Q. I see. He never did send you the certificate of title?

Defendant's Exhibit No. 1—(Continued)

(Deposition of Dr. Louis P. Lutfy.)

A. No, I never did receive the certificate of title.

Q. Did you ever make any application to the Arizona Motor Vehicle Department for a certificate of title?

A. No, because I would have to have this Illinois title before I could do that.

Q. Now, this car was stolen from you, was it?

A. Yes.

Q. When was that, Doctor?

A. It was stolen from me about—it was on Tuesday, October 28th. I returned to the office about two o'clock and parked the car right at the side of my building.

Q. Where is that?

A. At 301 West McDowell Road, and about 5:15, upon closing the office, I was going out the back door to get into the automobile, and I noticed it had disappeared.

Q. You had the keys to it, did you?

A. Yes, I had the keys in my pocket.

Q. And what, if anything, did you learn about who had taken the car or how it had disappeared, Doctor?

A. Well, when I came, I had a doctor occupying the back rooms of my office, and when I came back looking bewildered he says, "Oh, I saw somebody get in your car and drive off, and I was coming back to tell you about it, but the phone rang, and I went and answered the phone, and then I

Defendant's Exhibit No. 1—(Continued)

(Deposition of Dr. Louis P. Lutfy.)

forgot about it, I gave it no more thought because I thought you were having a mechanic take the car to have it repaired.”

Q. What doctor was that?

A. Dr. Reichert.

Q. Have you ever seen the car from that date to this?           A. No.

Q. Have you learned where the car is, or in whose possession it is?           A. Only through—

Mr. Struckmeyer: The record may show that I am instructing Dr. Lutfy to answer only those things which he knows of his personal knowledge.

Mr. Perry: Well, I asked him if he had learned.

Mr. Struckmeyer: Yes.

A. I have learned indirectly.

Q. And from whom did you acquire that information?

A. From the Federal Bureau of Investigation.

Q. Were you told by the Federal Bureau of Investigation who had the car and where it was?

A. Yes.

Q. And what did they tell you?

A. They stated that the car was sold in Miami, Florida at an auction to a man by the name of G. Horbath, 368 Northeast 52d Street, Miami, Florida.

Q. Have you made any effort to repossess the car from that man?           A. No.

Q. Why was that?

Defendant's Exhibit No. 1—(Continued)  
(Deposition of Dr. Louis P. Lutfy.)

A. Because it was up to the Insurance Company to repossess it.

Q. You have not tried to get it back at all?

A. No, I furnished them with all the information on the car and everything, and gave it to their representative, and asked them to——

Q. (By Mr. Perry): Were you also informed by the Federal Bureau of Investigation that a certificate of title had been issued to this man Horbath?

A. No, I was not.

Q. Now, did you apply for a warrant of arrest for anyone in connection with the theft of this car?

A. Yes.

Q. Just tell us about that, if you will.

A. Dr. Reichert and my wife and myself went down to the courthouse and signed a John Doe warrant for the arrest of the thief who stole the automobile, giving a description.

Q. And that description was obtained from Dr. Reichert, was it?      A. That is right.

Q. I see.      A. You want the date of that?

Q. Yes, if you have it.

A. That was on December 5th.

Q. '47?

A. '47, yes. Bob Renaud, the County Attorney.

Q. And do you know if the thief was ever apprehended?      A. No, I don't know.

Q. Now, you had given the Consolidated Motors a check for \$5900?      A. Yes.

Defendant's Exhibit No. 1—(Continued)

(Deposition of Dr. Louis P. Lutfy.)

Q. And you had also sent your wife \$5400?

A. 5600.

Q. \$5600? A. Yes.

Q. Did you get back the \$5900?

A. No, I got back part of it.

Q. I see.

A. I paid them their commission of \$500 and got back the remainder.

Q. That is Walden and Chadwick?

A. Yes.

Q. Did you have a lawsuit with them about that?

A. No, I didn't, but we threatened to sue them for the return of the money.

Q. You didn't actually file any suit?

A. We attached their bank accounts but we never did file suit.

Q. Who represented you in that matter?

A. My brother, William P. Lutfy.

Q. Then you attached their bank accounts for the \$5900? A. Yes.

Q. And then some settlement was made whereby you got back 5400?

A. Yes, we paid them the commission they wanted and got back the remaining money.

Q. It was \$500 and something like that?

A. Between four and five hundred dollars commission that we paid them.

Q. Did you have any other litigation over the purchase of this car? A. No, I don't think so.

Q. So this one suit, not necessarily a suit, but



Defendant's Exhibit No. 1—(Continued)  
(Deposition of Dr. Louis P. Lutfy.)

this attachment of the money of Walden and Chadwick's, and that is the only litigation you have ever had?      A. Yes.

Q. And where was that done, right here in Phoenix?      A. Here in Phoenix, yes.

Q. And then they did pay you the 5500, whatever it amounted to?

A. Yes. They stated that due to the fact they had made a contact for us and they had spent a considerable amount of money in telephone calls and everything that they were entitled to that commission, so we paid it and received back the balance of about \$5400 minus the cost of garnishments, and so forth.

Q. And you, yourself, as distinguished from Mrs. Lutfy, had nothing to do with the transaction back there in Chicago other than what phone calls you had back and forth to her and the wiring of this \$5600?      A. That is right.

Q. Did you at any time learn that prior to the time you got this car it had been in a wreck?

A. No, I never did know that.

Mr. Perry: I think that is all for Dr. Lutfy.

(The witness was excused.)

I hereby certify that I have read the foregoing 20 typewritten pages, and changes, if any, were made by me and initialed in ink, and the same is now a true and correct transcript of my testimony.

/s/ LOUIS P. LUTFY.

Defendant's Exhibit No. 1—(Continued)

BERTHA A. LUTFY

was called as a witness by the defendant for cross-examination under the Statute, and being first duly sworn, testified as follows:

Cross-Examination

By Mr. Perry:

Q. Now, will you state your name, please?

A. Bertha A. Lutfy.

Q. You are the wife of Dr. Lutfy who just testified here?

A. Yes.

Q. And one of the plaintiffs in this case?

A. Yes.

Q. You, Mrs. Lutfy, had nothing to do, I understand, with the ordering of this policy of insurance in which this suit is about?

A. No.

Q. And will you just tell us all that you can now with respect to the purchase of this particular car? Just give me a history of it if you can.

A. Well, on the morning of about the 17th we received this call from Chadwick and Walden concerning this particular car. Now, I might say that previous to this, over a period of months, they had contacted us on several different Continentals that were being driven through Phoenix, but we didn't want them because they weren't new cars. When they called us early in the morning they said it was a new car in Chicago, and it was on the display floor at the Chicago Motor Sales Company.



Defendant's Exhibit No. 1—(Continued)  
(Deposition of Bertha A. Lutfy.)

Q. Let me interrupt you right there. Did you take that telephone call, or did the Doctor?

A. We were in bed. He took the call.

Q. I see. Go right ahead.

A. Then my husband said—well, the conversation went on, and the only way we could get the car was for one of us to go back there and drive it out, so my husband said, "All right." I got a plane ticket that afternoon to fly back that evening. Chadwick and Walden came out to the house around 6:30, arrangements were made, a check was given to them made out to the Consolidated Motors in Tucson, a postdated check. Chadwick & Walden told me that I would not have to do a thing but get off that plane, call this Republic, I think it was 10567, and Mr. Marciano, and he would take me to the car. They said the car would be in our name, as a matter of fact. They said it was in our name then when they came out to the house, and it was at the Chicago Motor Sales Company; to get into the car, there was nothing to it but drive off then. When I arrived in Chicago, I called—I called Marciano. He wasn't home, and his wife told me to come out to their place, so I got a cab and went out to their home, and I waited for him, and after five o'clock he came in, and he confirmed that the car was there but it was not in our name, so then I tried to—oh, during the course of the evening, why, he asked me what I was paying for the car and I told him \$5900,

Defendant's Exhibit No. 1—(Continued)

(Deposition of Bertha A. Lutfy.)

and then he told me, why, he could get the car for \$5420, so I said, "All right." Well, Chadwick and Walden told us before I left, they said, "We aren't making a thing on this car. You have been a client of ours, you bought a car from us and——" what did he say? Oh, he said that the difference in the price of the automobile, the new price, and the 5900, it was tax, a new Chicago tax, and all of that stuff.

Q. Who told you that?

A. Walden and Chadwick did at our home.

Q. Both of them?

A. Yes. They said, "We aren't making a thing on this"—well, I made the deal then with Marciano. I went the next morning to see the car, and it was a black convertible Continental, and it was at the Chicago Motor Sales Company; it was not on the display window, and I asked why it was not. Marciano said, "Well, you were supposed to have come in on a plane early this morning"—and I didn't get in until noon—and they said they thought you weren't coming in. It had white side wall tires on it, and somebody else that was buying a new car there wanted the white side walls on it so they took them off. Well, I went upstairs at the Lincoln Agency there, I think it was the third floor, and there was the car, they were putting the black tires on, so that was the difference from the check, you know, 5600, and then it was cut down to 5420 was the price making an allowance for the tires. I

## Defendant's Exhibit No. 1—(Continued)

(Deposition of Bertha A. Lutfy.)

looked the car over and it looked new to me, no mileage on it, and there was another brand new Continental in there with no plates that was being taken out for delivery then, and I looked at it and had them put the hood up on it, and I looked inside, looked at the one I was getting, and they both looked alike to me, one was as clean as the other, so I had the check, and we were to go to the bank. He said, "We will have to go to the bank," so I went with Marciano to the bank and we were going to meet a representative of the Lincoln Agency there, and at the bank I met this Mr. Jordan and we were in there, I would say, about 20 minutes, and then one of the bank officials who was with Mr. Jordan, and then he came over there without Mr. Jordan, this bank official and myself, and then I endorsed the check, identified myself, and he endorsed the check, gave it to Mr. Jordan, he cashed it and he gave me back the change from the \$5420. He handed me the title to the car. On the title it was '47, so I left the bank—

Q. Let me interrupt you right there. Whose name was the title in?

A. The title was in Donald Jordan's name. So I asked Marciano, I asked him why it was in the name of Donald Jordan, I was talking to him. He said, "Well, they did that because there are so many people—people that want Continentals that has been on the floor down there, you know, for a month or

Defendant's Exhibit No. 1—(Continued)

(Deposition of Bertha A. Lutfy.)

so, and so many people before them, and they put it in somebody's names and they say the car is sold, so in that way there wouldn't be any trouble by somebody coming in from out of town to buy the car." Well, that sounded satisfactory——

Q. Was anything said at this time about this man Jordan having a lien on the car?

A. Well, I didn't know—I didn't know what was going on. I was standing there in the bank by one of those pillars, you know, and I had been waiting for Mr. Jordan. I met him and he went over some place to one of the offices there, you know, with a little fence in the bank, and was talking with them, and I didn't know. The man came over with the banker and I identified myself and made the deal there.

Q. That was the Corn Exchange National Bank?

A. No, was it Corn—no, no, no—wait a minute, I will think in just a minute the bank. It was this Exchange National Bank.

Q. The Exchange National Bank?

A. Yes.

Q. And was anything said at that time or any place else while you were talking there that this bank had a mortgage on the car? A. No.

Q. Where is this bank, Mrs. Lutfy?

A. Well, I am not too familiar with Chicago, but it was on—you know the address there, don't you, Jimmie, that the Exchange National Bank is?

Defendant's Exhibit No. 1—(Continued)  
(Deposition of Bertha A. Lutfy.)

Mr. Struckmeyer: That is what I was looking for.

A. Was it on State Street? It was a new modern bank with a drive-in place there.

Q. (By Mr. Perry): Well, it doesn't make any particular difference, I just wondered if you knew. In any event, you had a check from the Western Union payable to you? A. Yes, sir.

Q. For \$5600? A. Yes, sir.

Q. And you endorsed the check? A. Yes.

Q. And gave it to who?

A. To Mr. Jordan, who, in turn, endorsed it and cashed it.

Q. Do you recall the name of the bank official that was there at the time?

A. No, but there is on this check, he did put his endorsement on it after I identified myself. It is on here. I have a photostatic copy. There is the endorsement here and one here. I don't know which one, other than the initial "RCL" and "RBH". Doesn't it look like that?

Q. Would you recall his name?

A. Oh, no, no.

Q. The name Schussler—S-c-h-u-s-s-l-e-r doesn't mean anything?

A. No. The endorsement is on here.

Q. Now, when I interrupted you, you started to say something about then when you left the bank.

A. I left the bank. I had title and then I went



Defendant's Exhibit No. 1—(Continued)

(Deposition of Bertha A. Lutfy.)

and called my husband to have it covered by insurance. Then I wanted—I asked Marciano, “Now, what do I do—where do I go to get this title put into my name?” So he said, “Well,” he said, “You let me take care of that,” and as long as—I told him I was going to River Forest to see some friends for a couple of days, and he said, “I will take care of that in the morning and airmail the title out to Phoenix and it will be there before you arrive in Phoenix.”

Q. At that time you had the certificate of title?

A. I had the certificate of title and I had put “Dr. and Mrs. Louis P. Lutfy” on it. I had signed it.

Q. Was it an Illinois certificate of title?

A. Yes.

Q. Issued to this Donald Jordan?

A. Donald Jordan.

Q. And then you signed for your husband and yourself on the place for the purchaser to sign?

A. Yes.

Q. And then gave it to Marciano? A. Yes.

Q. All right. And he told you that he would get it transferred and send it to you at Phoenix?

A. That is right.

Q. Then what happened, Mrs. Lutfy?

A. Well, then, I went to River Forest and was there a day or two, and then drove to Phoenix.



Defendant's Exhibit No. 1—(Continued)  
(Deposition of Bertha A. Lutfy.)

Q. You made no application to obtain an Arizona certificate of title?      A. No, sir.

Q. And you and your husband both drove the car, did you, until it was stolen?

A. Well, my husband drove it most of the time because I had my own.

Q. You drove it all the way out here?

A. Yes, sir.

Q. Did it have an Illinois license still on it when you had it?

A. No, it didn't. Chadwick and Walden told me to take Arizona plates back there.

Q. How did you get the Arizona plates for it?

A. Well, I just took some Arizona plates.

Q. Some that you had had on another car?

A. Yes, off the Buick.

Q. That was the Buick that you folks had owned here?      A. That is right.

Q. And you took the plates off of them?

A. That is right.

Q. Took them back to put on this car there?

A. Yes.

Q. And drove it out with the Arizona plates on it?

A. Yes, sir. Mr. Marciano put them on for me.

Q. Now, how many times did you meet this man Jordan?      A. Once.

Q. And that was in the Exchange National Bank?      A. That is right.

Defendant's Exhibit No. 1—(Continued)  
(Deposition of Bertha A. Lutfy.)

Q. And there was Marciano and you and Jordan and some official or some employee of the bank there at that time?      A. That is right.

Q. And you were all there together; I mean you would have heard anything that the rest of them said? I mean all four of you were right there together, Jordan and the bank officer and Marciano and yourself?

A. Yes. Marciano was sitting a little to the side, and when I saw the title was in Jordan's name, I stepped over and talked to him about that and he told me the story that I have previously told.

Q. Did Jordan sign the certificate of title and the endorsement on it to you and the Doctor right there in your presence?      A. Yes.

Q. I believe you already told us then when he did that you signed Dr. Lutfy's name and your name where the purchasers should sign?

A. That is right.

Q. Up until that time had you driven the car?

A. No.

Q. It was where, at the Chicago——

A. Chicago Motor Sales, Lincoln-Mercury.

Q. Do you know where that is?

A. That is on Michigan, South Michigan Avenue.

Q. It doesn't make any difference, I just wondered if you knew.

A. It is one of the main Lincoln agencies there.

## Defendant's Exhibit No. 1—(Continued)

(Deposition of Berthá A. Lutfy.)

Q. Then when you left the bank you had already given Marciano the title certificate back, is that right?

A. No, not in the bank, I didn't give it to him, no.

Q. Where did you give it to him, Mrs. Lutfy?

A. I gave it to him after I picked the car up. I had the car, and when I was getting ready to leave him. That was, I don't know exactly where it was, in Chicago. I am not familiar with the city.

Q. Do you know whether it was at the Chicago Motor Sales Company?      A. No.

Q. Then after you left the bank you went and got the car, is that right?

A. I went and got the car.

Q. Was Marciano or Jordan with you then?

A. Marciano.

Q. You saw Jordan no more after he got his money?      A. No.

Q. Then Marciano went back with you to this Chicago Motor Sales to get the car, is that right?

A. Yes.

Q. And then some time after that you gave him the certificate of title back?

A. Yes—you see, I saw Jordan no more after I left the bank.

Q. Yes.

A. Well, Mr. Marciano had the car that he was driving me around in and we all left the bank to-

Defendant's Exhibit No. 1—(Continued)

(Deposition of Bertha A. Lutfy.)

gether and Mr. Marciano left Jordan off a few blocks, three or four blocks down in the Loop somewhere, some office.

Q. You and Marciano went on back to the Chicago Motor Sales?           A. That is right.

Q. You got the car?           A. That is right.

Q. What I am trying to get at is, when was it with reference to that that you gave Marciano back the title certificate.

A. It was after I got the car.

Q. And you don't know where?

A. It was in Chicago. I will tell you—it was in front of the Du Pont Company, Du Pont de Nemours, one of their offices that I gave him the title. That is one thing that I remember.

Q. You had the car at that time?

A. Yes, it was parked right in front.

Q. How did you happen to meet Marciano there?

A. Chadwick and Walden had given me one of their cards. It was a card with A. Marciano on it and his telephone number, Republic 10567.

Q. He never did give you the title after that?

A. After I gave it to him? No.

Q. You never saw it any more?           A. No.

Q. And these Buick plates, were they used on it at all times after Marciano put them on up until the car was stolen?

A. I don't remember that.

Defendant's Exhibit No. 1—(Continued)  
(Deposition of Bertha A. Lutfy.)

Q. You don't remember whether you put any other—

A. We didn't put any other plates on it, no. I don't remember.

Q. And do you know why you didn't ask or apply for Arizona license plates?

A. Because we had to have the certificate of title.

Q. What I meant was why you didn't apply for Arizona certificate of title.

A. Well, we kept expecting any day to receive the certificate of ownership, you know, from Marciano, and it never did come.

Q. I get you. Did you have anything to do with the settlement with this Chadwick and Walden suit, or was it handled by the Doctor?

A. Well, I was there. Yes, I guess I did have something to do with it.

Q. You heard Dr. Lutfy's testimony about the settlement, that is correct as you understand it, is it?      A. Oh, yes.

Q. Now, this \$5600 telegraphic money order, did you see how the proceeds of that were distributed there in the bank? You got a part of it back?

A. Yes. After I identified myself to the bank employee, I endorsed the check in his presence then. Then he came to Jordan and stepped over to the Cashier's window and cashed it and gave me the change.

Defendant's Exhibit No. 1—(Continued)

(Deposition of Bertha A. Lutfy.)

Q. And did you see him do anything with the part that he kept, give it to anybody else?

A. No.

Q. He didn't give it to anybody in your presence?

A. No, because Marciano was standing by me.

Q. How much did you get back? A. \$180.

Q. That was on what date?

A. That was about the 19th.

Q. That is the same day, in any event, that you phoned Dr. Lutfy that you purchased the car?

A. Yes.

Q. When you first saw the car there at the Chicago Motor Sales, did it have any license plates on it? A. No.

Q. Never did until you had the Arizona plates put on? A. I don't know whether it ever did.

Q. No, but I mean while you saw it?

A. No.

Q. This title certificate that was given you by Mr. Jordan, did it show any lien in favor of the Exchange National Bank, or anyone else?

A. I don't know.

Q. You don't remember? A. I don't.

Q. The reason I asked you, Mrs. Lutfy, the information we have is that there was a mortgage on the car to this Exchange National Bank and that a portion of the money that you paid to Jordan was



Defendant's Exhibit No. 1—(Continued)  
(Deposition of Bertha A. Lutfy.)

used to pay for that lien. Did you know anything about that at all?

A. Well, I will tell you, when I had the title and I was in such a hurry to get out of Chicago and I went over and saw the model number, '47, and Donald Jordan's name, and, of course, that was all right by me because Marciano had told me that story, and Marciano told me where to sign the title and all, and I signed it and I can see now as long as the car was stolen why that was all in such a hurry.

Q. You didn't notice a lien, any notation of a lien on there in favor of this bank?

A. I really didn't pay any attention.

Q. Or any stamp by the bank that that lien was paid off?

A. I couldn't tell you, I mean I couldn't swear to anything like that.

Q. In any event, you didn't see Jordan pay any of that money over to the bank?

A. All he did, that I saw him do in the bank, was to get the cash on the check, because I endorsed it, gave it to him, he endorsed it, stepped over to the window, cashed it and came back to this pillar with a little bench around it and paid me, and I turned around and talked to Marciano, and we were on our way out of the bank.

Q. I mean you didn't see him go back to the

Defendant's Exhibit No. 1—(Continued)

(Deposition of Bertha A. Lutfy.)

window or any place and pay any money to the bank?

A. As I say, when we first came in, after I met him, he was supposedly one of the officials from the Lincoln Company, Marciano told me, and I saw him talking to people, you know, behind this little railing of this bank, and the official came over with him and I made the identification and we were around this little pillar there.

Q. This bank official was particular about your identification, I take it?

A. Definitely; absolutely.

Q. Did you have to show him some papers?

A. I had to show him my driver's license and I showed him the Western Union telegram that came with the check.

Q. He was particular about it?

A. Oh, very, very.

Q. And did Marciano or Jordan, either one of them, tell you why they wanted to meet at the bank to transact this?

A. I asked Marciano, well, "Why do we have to go to the bank"? "Well," he said, "it is Saturday and the banks close at noontime," and this, that and the other, you know, and he was in a rush to get into the bank before noon and get this all straightened out.

Defendant's Exhibit No. 1—(Continued)  
(Deposition of Bertha A. Luffy.)

Q. Neither one of them told you about there being a mortgage on the car?

A. Not a thing.

Q. The information that you had was that it was a new car on the floor of this Motor——

A. Absolutely. They told us here in Phoenix that it is sitting back there in that display window floor there and it is a new car all right, and all you had to do is to get in the car, don't talk anything about price or anything, just have to get in the car and drive back to Phoenix; very simple.

Q. The first you knew that it was registered in Jordan's name was there at the bank, is that it?

A. That is right; that is right.

Mr. Perry: That is all.

(The witness was excused.)

I hereby certify that I have read the foregoing 19 typewritten pages, and changes, if any, were made by me and initialed in ink, and the same is now a true and correct transcript of my testimony.

/s/ BERTHA A. LUFFY.

State of Arizona,  
County of Maricopa—ss.

Be It Known that I took the foregoing depositions pursuant to notice on file herein; that I was then and there a Notary Public in and for the County

Defendant's Exhibit No. 1—(Continued)

(Deposition of Bertha A. Lutfy.)

of Maricopa, State of Arizona, and by virtue thereof authorized to administer an oath; that the witnesses before testifying were duly sworn by me to testify to the truth, the whole truth and nothing but the truth; that said depositions were reduced to typewriting under my direction, and that the foregoing 39 typewritten pages constitute a full, true and accurate transcript of the words and testimony of said witnesses and all proceedings had.

Witness my hand and seal of office this, the 7th day of January, 1949.

[Seal]     /s/ LOUIS L. BILLAR,  
Notary Public.

My commission expires March 27, 1951.

[Endorsed]: Filed Feb. 10, 1949.

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DEFENDANT'S EXHIBIT NO. 2

Feb-11-47	26-59752	-719-600	17.00
Name Don E. Jordan			2704589
Street Address 343 S. Dearborn St.,			
City or Town Chicago	Zone	County Cook	Illinois
Name of Car Lincoln Cont., Style of Body Cab., Year Model 1946			
Factory No. H-150 200	Engine No. H-150 200		
Model 66H	No. and Bore of Cyl. 2 15/16	Horse Power 41.4	
Written Signature of Owner	Don E. Jordan		
License Plates bearing above number are assigned to owner named hereon for motor vehicle described for year ending December 31, 1947.	Edward J. Barrett, Secretary of State	1947	

### Defendant's Exhibit No. 2—(Continued)

Send Separate Remittance With Applications for Each Vehicle.  
Do Not Send Cash or Stamps. Send Check, Draft, or Money  
Order.

#### Last Identification Card to Be Attached Here

A title application should accompany this application if an Illinois title has not been issued in your name for this vehicle. If new car purchased dealer must execute Bill of Sale on back of your title application. If used car purchased send assigned title with these applications.

I (We) purchased or acquired the above described motor vehicle New, on January 8, 1947, by Bill of Sale from Motor Sales Co.

Whose Address is 2545 South Michigan Ave., Chicago 16, Illinois

Where did you register car last year? Just bot License No. Just bot

When did you bring car to Illinois? Just bot

If Illinois Certificate of Title has been issued by the State in your name, show title number Just bot

Remarks: None

Subscribed and sworn to before me this 8 day of January, 1947

(Seal)

Marguerite B. Miller, Notary Public

2545 South Michigan Ave., Chgo.

Office Use Only

All Questions

Office Use Only

Must Be Answered Fully

Description of Remittance: Draft, Certified Check,

Postal or Exp. M. O. No. \$17.50, Peterson

Passenger Car Application

Carrying not more than seven passengers

Edward J. Barrett, Secretary of State

For Instructions, See Opposite Side

164383

Attach to Appl. in Same Name

Name D. E. Jordan

2704589

Street Address 1220 No. State Parkway

Duplicate

City or Town Chicago

Illinois

Name off Car Lincoln Cont., Style of Body Cab., Year Model 46

Factory No. H 150 200 Engine No. H 150 200 Horse Power 41.4

Written Signature of Owner D. E. Jordan



Defendant's Exhibit No. 2—(Continued)

The following lien is recorded against this vehicle:

Amount \$1577.89 Kind of Lien Chat. mgt.

In Favor of Exchange National, 130 S. LaSalle Chgo.

(Stamped Paid 10 16 1947)

Print or Typewrite Name and Address in Full—Use Black Ink  
Colored Inks, Rubber Stamps, or Pencils Do Not Photograph

Reason for requiring duplicate Lost

Date of purchase of vehicle April 21, 1947

Number of Original Title 2704-589

Last license number 719-600

Is this vehicle used as a taxi-cab? no

Are you still the owner of this vehicle? yes

Who has possession of this vehicle at the present time? me

Name D. E. Jordan

Address 1220 No. State Parkway

(Certificate of Title Issued Oct 18 1947) O K'D

If you have endorsed the original certificate of title, to whom did you endorse it?

Name

Address

If original title was mailed to lienholder, this application must be accompanied by a statement from the lienholder that the original title is not in his custody.

This application must be executed by person to whom lost title was issued.

Subscribed and sworn to before me this 16th day of October, 1947.

(Seal)

Phyllis L. Kamis, Notary Public

343 So. Dearborn St.

Mail Certificate of Title to D. E. Jordan

Address 343 So. Dearborn St., Chicago, Illinois

Application for Duplicate Certificate of Title  
For Any Motor Vehicle, Trailer, and Semi-Trailer

Certificate of Title Fee 50c—Required by Law

Edward J. Barrett, Secretary of State

A. R. Millard

For Duplicate Title Only

For Duplicate Title Only

(Stamped Checked Oct. 17, 1947 E. Hart)



## Defendant's Exhibit No. 2—(Continued)

Oct-18-47	17-7608	DT 2-704-589	2	0.50
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Application for Duplicate Certificate of Title for Motor Vehicle  
(Read instructions carefully) Oct 17 1947

Answer all questions fully. Incomplete applications or incorrect fees will be returned.

Do Not Send Currency or Stamps. The Secretary of State will assume no responsibility for loss. Send Certified Check, Draft or Money Order With Each Individual Application.

Duplicates will only be issued in case Secretary of State is satisfied original is lost or destroyed, and upon Oath of applicant to that effect.

Cost of duplicate Titles, 50 cents each.

This application must be signed in same manner as original.

Duplicate will not be issued unless signature agrees with the signature on the Original Application.

If original title is in joint names, both parties must sign this application.

If the party in whose name original was issued is deceased, Copy of Letters of Administration, or Court Order, must accompany this application.

Trustee must attach Copy of Appointment by Court.

If applicant can not sign name, his or her mark must be witnessed by third person before notary.

Any person knowingly making a false statement in any application for Certificate of Title or any other document required by the Motor Vehicle Anti-Theft Act, may be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both. (16 Motor Vehicle Anti-Theft Act.)

Law Limits Fee of Notary Public to Not More Than 25c

Edward J. Barrett, Secretary of State

Name Donald E. Jordan 2704-589

Address 1220 N. State Parkway

City or Town Chicago County Cook Illinois

Name of Car Lincoln Cont., Style of Body Cab., Year Model 1946

Factory No. H-150 200 Engine No. H-150 200 Horsepower 41.4

Defendant's Exhibit No. 2—(Continued)

Signature of Owner D. E. Jordan

Apr. 21, 1947

This vehicle is subject to the following lien :

Amount \$1577.89 Kind of Lien chattel mtg.

In Favor of Exchange National Bank, 130 S. LaSalle St.

If this vehicle is used as a taxi-cab, place the word "Taxi" in addition to style of body, in style of body space above.

Print or Typewrite Name and Address in Full  
Use Black Ink

Colored Inks, Rubber Stamps, or Pencils Do Not Photograph

Reason for requiring correction :—Check reason—

To register a lien xx To correct an address ✓

(Other reasons not filled out)

(Certificate of Title stamp Issued Apr 21 1947)

Imperative—Return incorrect title : Number

This application authorizes the Secretary of State to change any records affected by this application.

Subscribed and sworn to before me this 10 day of April, 1947.

(Seal)

William Finucci, Notary Public

130 So. LaSalle St.

Mail Certificate of Title to Exchange National Bank

Address 130 S. LaSalle St., Chicago, Illinois

All Questions Must Be Answered Fully  
Application for Corrected Certificate of Title

For Any Motor Vehicle

To Be Used When Original Title Is in Error

Certificate of Title Fee 50c—Required by Law

Edward J. Barrett, Secretary of State

For Instructions, See Opposite Side

(Stamped Checked Apr 17 1947 Bogenschutz)

For Title Correction

For Title Correction

Name Don E. Jordan

2704589

Street Address 343 S. Dearborn St.,

City or Town Chicago Zone County Cook Illinois

Name off Car Lincoln Cont., Style of Body Cab., Year Model 1946

## Defendant's Exhibit No. 2—(Continued)

Factory No. H-150 200 Engine No. H-150 200 Horse Power 41.4

Written Signature of Owner Don E. Jordan

This vehicle is subject to the following lien : None

Print or Typewrite Above, Use Black Ink Only

## Instructions

1. All questions must be answered in full.
2. Applicant must sign personally.
3. If application is in the name of a firm, the firm name must be countersigned by an authorized official of the company.
4. If application is in two or more names, each individual must sign.
5. Application must be properly acknowledged.
6. Amount and kind of lien, name and address of lien holder must be given.
7. If purchased new have dealer complete Bill of Sale form on back of this application.
8. If purchased used, attach the Certificate of Title assigned to you by the seller.
9. Before accepting an assigned title, liens on face of title must be stamped paid and signed by lien holder or an authorized official.
10. Any changes, erasures, mutilations, ink eradications upon Bill of Sale, Certificate of Title, Certificate of Origin voids assignment and will not be accepted.

I (We) acquired the above car New x on January 8 1947

From Motor Sales Co.

Whose address is 2545 South Michigan Ave., Chicago 16, Ill.

Have you operated this car in Illinois? Just bot

Do you intend to operate this car? Yes

When did you bring this car to Illinois? Just bot

Are you a licensed dealer in cars? No

Remarks: None

Subscribed and sworn to before me this 8 day of January, 1947

(Seal)

Marguerite B. Miller, Notary Public

2545 South Michigan Ave., Chgo., Ill.

(Stamped Certificate of Title Issued Feb 26 1947)

Defendant's Exhibit No. 2—(Continued)

Mail Certificate of Title to Don E. Jordan

Address 343 S. Dearborn St., Chicago, Illinois

(In Ink 17.50 Peterson)

Surrendered Title Number.....

Application for Certificate of Title Only

For Any Motor Vehicle, Trailer, or Semi-Trailer

Certificate of Title Fee 50c—Required by Law

Edward J. Barrett, Secretary of State

For Title Only

For Title Only

Feb-11-47      26-59753      -719-600      0.50

Application for Certificate of Title for Motor Vehicle

(Read instructions carefully)

Answer all questions fully. Incomplete applications or incorrect fees will be returned.

Do Not Send Currency or Stamps, as the Secretary of State will not accept stamps and will assume no responsibility for the loss of currency. Send Certified Check, Draft, Postal or Express Money Order With Applications.

The law requires both factory and engine numbers on application. Where factory and engine numbers are the same, write "No Number" in the factory number space.

Certificate of Title must be assigned and delivered to purchaser.

The Motor Vehicle Anti-Theft Act, approved May 11, 1933, provides that the Secretary of State shall not after January 1, 1934, register or renew a registration of any motor vehicle, unless and until the owner shall make application for and be granted a Certificate of Title. (Sec. 3 (a).)

The Fee for Certificate of Title Is 50c.

An owner who registers a vehicle does not apply for a Title each year. His original Certificate of Title is valid as long as he retains that vehicle.

Any person knowingly making a false statement in any application for Certificate of Title or any other document required by the Motor Vehicle Anti-Theft Act, may be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both. (Sec. 16 Motor Vehicle Anti-Theft Act.)

If application is for registration of a New car purchased from

## Defendant's Exhibit No. 2—(Continued)

a dealer for which a Certificate of Title has not previously been issued, Dealer must complete bill of sale form at bottom of application. (Sec. 4 (b).)

Law Limits Fee of Notary Public to Not More Than 25c

The undersigned statements were subscribed and sworn to before me this 8 day of January, 1947.

(Seal) Marguerite B. Miller, Notary Public

2545 South Michigan Ave., Chgo., Ill.

Firm Name Motor Sales Co. of 2545 South Michigan Ave., Chicago 16, Ill., in consideration of \$4848.00 do hereby sell on 1-8-47 a Lincoln Cont. Cab., Year Model 1946, Model 66H, Horsepower 41.4, Factory No. H-150 200, Engine No. H-150 200

This motor vehicle is equipped with safety glass wherever glass is used in doors, windows, windshields, etc. Yes

To Don E. Jordan of 343 S. Dearborn St., Chicago, Illinois.

(Original Bill of Sale)

The undersigned is the lawful and legal owner of the above described new automobile and guarantees it to be free from all mortgages, mechanic's lien, finance loans, and conditional sales contracts, notes or any encumbrance.

With the following exceptions:

There is a lien or encumbrance of None

Dealer's License Number 5111

(Stamped Apr 18 1947)

Signature of Seller Motor Sales Co.

By E. Zientek (Agent of Company)

Signature of Buyer Don E. Jordan

Edward J. Barrett, Secretary of State

State of Illinois

The Secretary of State

Certificate of Title of a Motor Vehicle

(Stamped Surrendered Title Apr 18 1947)

I, Edward J. Barrett, Secretary of State of the State of Illinois, do hereby certify that application has been made to me for a certificate of title of a motor vehicle described as follows:

Name Don E. Jordan

Title No. 2704589

Street Address 343 S. Dearborn St.,



Defendant's Exhibit No. 2—(Continued)

City or Town Chicago      Zone      County Cook      Illinois  
Name of Car Lincoln Cont., Style of Body Cab., Year Model 1946  
Factory No. H-150 200    Engine No. H-150 200    Horse Power 41.4  
Written Signature of Owner Don E. Jordan

This vehicle is subject to the following lien : None

Applicant has stated under oath that said applicant is the owner of said motor vehicle and that it is subject to the above liens and encumbrances and no others.

I do further certify that I have used reasonable diligence in ascertaining that the facts stated in said application for a certificate of title are true. Therefore, I certify that the above named applicant has been duly registered in my office as the lawful owner of the above described motor vehicle, and it appears upon the official records of my office that at the date of the issuance of this certificate said motor vehicle is subject to the liens hereinbefore enumerated.

In Witness Whereof, I have hereto affixed my signature and the Great Seal of the State of Illinois, at Springfield.      Feb 25 1947

Edward J. Barrett, Secretary of State.

(Keep this Certificate of Title in a safe place. Do not accept title showing any erasures, alterations or mutilations)

State of Illinois

The Secretary of State

Certificate of Title of a Motor Vehicle

I, Edward J. Barrett, Secretary of State of the State of Illinois, do hereby certify that application has been made to me for a certificate of title of a motor vehicle described as follows:

(Stamped Surrendered Title Oct 24 1947)

A 76717

Name D. E. Jordan      2704589  
Street Address 1220 No. State Parkway      Duplicate  
City or Town Chicago      Illinois

Name of Car Lincoln Cont., Style of Body Cab., Year Model 46  
Factory No. H 150 200    Engine No. H 150 200    Horse Power 41.4  
Written Signature of Owner D. E. Jordan

The following lien is recorded against this vehicle :



## Defendant's Exhibit No. 2—(Continued)

Amount \$1577.89 Kind of Lien Chat. mgt.

In Favor of Exchange National, 130 S. LaSalle, Chgo.

(Stamped illegible)

Applicant has stated under oath that said applicant is the owner of said motor vehicle and that it is subject to the above liens and encumbrances and no others.

I do further certify that I have used reasonable diligence in ascertaining that the facts stated in said application for a certificate of title are true. Therefore, I certify that the above named applicant has been duly registered in my office as the lawful owner of the above described motor vehicle, and it appears upon the official records of my office that at the date of the issuance of this certificate said motor vehicle is subject to the liens hereinbefore enumerated.

In Witness Whereof, I have hereto affixed my signature and the Great Seal of the State of Illinois, at Springfield. Oct 18 1947

Edward J. Barrett, Secretary of State.

(Keep this Certificate of Title in a safe place. Do not accept title showing any erasures, alterations or mutilations)

To be filled in by seller and delivered with vehicle to the purchaser. Application for new certificate of title must be made and immediately forwarded to the Secretary of State with fee of 50c.

## Assignment of Title

For Value Received (We) Hereby Sell and Assign to

Henry Green 2847 Washington Blvd. Chgo, Ill.

The motor vehicle described on the reverse side of this certificate and I (we) hereby warrant the title of the said motor vehicle to be free from all liens and encumbrances except as follows:

Amount of Lien \$ none Kind of Lien

In favor of

Signature D. E. Jordan, Seller

Subscribed and sworn to before me this 22 day of October 1947

William H. Roberts (Notary Public) (Seal)

My Commission Expires Sept. 29, 1951

(No data in rest of form)

Defendant's Exhibit No. 2—(Continued)

MF 7

Name Henry Green Title No. A 76717

Street Address 2847 Washington Blvd. 63

City or Town Chicago Zone County Cook Illinois

Name of Car Lin. Cont. Style of Body Cab. Year Model 46

Factory No. H 150-200 Engine No. H 150-200 Horse Power 41.4

Written Signature of Owner Henry Green

This vehicle is subject to the following lien : None

Print or Typewrite Above, Use Black Ink Only

Instructions

1. All questions must be answered in full.
2. Applicant must sign personally.
3. If application is in the name of a firm, the firm name must be countersigned by an authorized official of the company.
4. If application is in two or more names, each individual must sign.
5. Application must be properly acknowledged.
6. Amount and kind of lien, name and address of lien holder must be given.
7. If purchased new have dealer complete Bill of Sale form on back of this application.
8. If purchased used, attach the Certificate of Title assigned to you by the seller.
9. Before accepting an assigned title, liens on face of title must be stamped paid and signed by lien holder or an authorized official.
10. Any changes, erasures, mutilations, ink eradications upon Bill of Sale, Certificate of Title, Certificate of Origin voids assignment and will not be accepted.

(Stamped Certificate of Title Issued Oct 24 1947)

I acquired the above car Used on Oct. 21, 1947

From D. E. Jordan

Whose address is 1220 N. State Pk.way, Chgo, Ill.

Have you operated this car in Illinois? No

Do you intend to operate this car? No

When did you bring this car to Illinois? ———

## Defendant's Exhibit No. 2—(Continued)

Are you a licensed dealer in cars? Yes

Remarks:

Subscribed and sworn to before me this 22 day of October 1947

(Seal)

William H. Roberts, Notary Public

My Commission Expires Sept. 29, 1951

7852 Champlain

Mail Certificate of Title to Henry Green

Address 2847 Washington Blvd., Chicago, Ill.

Surrendered Title Number 2704589 Ill.

Application for Certificate of Title Only

For Any Motor Vehicle, Trailer, or Semi-Trailer

Certificate of Title Fee 50c—Required by Law

Edward J. Barrett, Secretary of State

A. R. Millard (stamped)

For Title Only

For Title Only

Oct-24-47      7      10400      To A- 76-717      2      0.50      7

Application for Certificate of Title for Motor Vehicle

(Read instructions carefully)

Answer all questions fully. Incomplete applications or incorrect fees will be returned.

Do Not Send Currency or Stamps, as the Secretary of State will not accept stamps and will assume no responsibility for the loss of currency. Send Certified Check, Draft, Postal or Express Money Order With Applications.

The law requires both factory and engine numbers on application. Where factory and engine numbers are the same, write "No Number" in the factory number space.

Certificate of Title must be assigned and delivered to purchaser.

Oct 23 1947

The Motor Vehicle Anti-Theft Act, approved May 11, 1933, provides that the Secretary of State shall not after January 1, 1934, register or renew a registration of any motor vehicle, unless and until the owner shall make application for and be granted a Certificate of Title. (Sec. 3 (a).)

The Fee for Certificate of Title Is 50c.

An owner who registers a vehicle does not apply for a Title each year. His original Certificate of Title is valid as long as he retains that vehicle.

Defendant's Exhibit No. 2—(Continued)

Any person knowingly making a false statement in any application for Certificate of Title or any other document required by the Motor Vehicle Anti-Theft Act, may be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both. (Sec. 16 Motor Vehicle Anti-Theft Act.)

If application is for registration of a New car purchased from a dealer for which a Certificate of Title has not previously been issued, Dealer must complete bill of sale form at bottom of application. (Sec. 4 (b).)

Law Limits Fee of Notary Public to Not More Than 25c  
(No information filled in remainder of this form)

Edward J. Barrett, Secretary of State

State of Illinois

The Secretary of State

Certificate of Title of a Motor Vehicle

I, Edward J. Barrett, Secretary of State of the State of Illinois, do hereby certify that application has been made to me for a certificate of title of a motor vehicle described as follows:

(Stamped Surrendered Title Nov 3 1947)

Name Henry Green A 76717

Street Address 2847 Washington Blvd. 63

City or Town Chicago Zone County Cook Illinois

Name of Car Lin. Cont. Style of Body Cab. Year Model 46

Factory No. H 150-200 Engine No. H 150-200 Horse Power 41.4

Written Signature of Owner Henry Green

This vehicle is subject to the following lien: None

Applicant has stated under oath that said applicant is the owner of said motor vehicle and that it is subject to the above liens and encumbrances and no others.

I do further certify that I have used reasonable diligence in ascertaining that the facts stated in said application for a certificate of title are true. Therefore, I certify that the above named applicant has been duly registered in my office as the lawful owner of the above described motor vehicle, and it appears upon the official records of my office that at the date of the issuance of this certificate said motor vehicle is subject to the liens hereinbefore enumerated.

## Defendant's Exhibit No. 2—(Continued)

In Witness Whereof, I have hereto affixed my signature and the Great Seal of the State of Illinois, at Springfield. Oct 24 1947

Edward J. Barrett, Secretary of State.

(Keep this Certificate of Title in a safe place. Do not accept title showing any erasures, alterations or mutilations)

(Stamped A 98944)

To be filled in by seller and delivered with vehicle to the purchaser. Application for new certificate of title must be made and immediately forwarded to the Secretary of State with fee of 50c.

## Assignment of Title

For Value Received I (We) Hereby Sell and Assign to Henry Greenspon, 1503 So. Komensky Ave., Chicago, Ill.

The motor vehicle described on the reverse side of this certificate and I (we) hereby warrant the title of the said motor vehicle to be free from all liens and encumbrances except as follows:

Amount of Lien \$ None Kind of Lien

In favor of

Signature Henry Green, Seller

Fred Klein, Notary Public  
(Seal)

Subscribed and sworn to before me this 31 day of October 1947

Re-Assignment by Dealer (form blank)

Oct-31-47      40    26160      1-717-938      850

Name Henry Greenspon      A 98944

Street Address 1503 So. Komensky Ave.

City or Town Chicago      Zone 23      County Cook      Illinois

Name of Car Lincoln Cont., Style of Body Cab., Year Model 1946

Factory No. H. 150200      Engine No. H. 150200

Model 1946      No. and Bore of Cyl. 12      Horse Power 41.4

Written Signature of Owner Henry Greenspon

License Plates bearing above number are assigned to owner named hereon for motor vehicle described for year ending December 31, 1947.

Edward J. Barrett, Secretary of State

Send Separate Remittance With Applications for Each Vehicle.  
Do Not Send Cash or Stamps. Send Check, Draft, or Money Order.



Defendant's Exhibit No. 2—(Continued)

Last Identification Card to Be Attached Here

A title application should accompany this application if an Illinois title has not been issued in your name for this vehicle. If new car purchased dealer must execute Bill of Sale on back of your title application. If used car purchased send assigned title with these applications.

I (We) purchased or acquired the above described motor vehicle used on 10 27, 1947, by Bill of Sale from Henry Green Whose Address is 2847 Washington Blvd., Chicago, Ill.

Where did you register car last year? License No.

When did you bring car to Illinois?

If Illinois Certificate of Title has been issued by the State in your name, show title number A 76717

Remarks:

Subscribed and sworn to before me this 31 day of Oct., 1947

(Seal) /s/ M. Comath

Office Use Only

All Questions

Office Use Only

Must Be Answered Fully

9.00 /s/ Comath

Description of Remittance:

Draft, Certified Check, Postal or Exp. M. O. No.

Passenger Car Application

Carrying Not More Than Seven Passengers

Edward J. Barrett, Secretary of State

For Instructions, See Opposite Side

Batch # 1

Name Henry Greenspon

Title No. A 98944

Street Address 1503 So. Komensky Ave.

City or Town Chicago Zone 23 County Cook Illinois

Name of Car Lincoln, Cont., Style of Body Cab., Year Model 1946

Factory No. H. 150200 Engine No. H. 150200 Horse Power 41.4

Written Signature of Owner Henry Greenspon

This vehicle is subject to the following lien: none

Instructions

1. All questions must be answered in full.
2. Applicant must sign personally.
3. If application is in the name of a firm, the firm name must be countersigned by an authorized official of the company.



## Defendant's Exhibit No. 2—(Continued)

4. If application is in two or more names, each individual must sign.
5. Application must be properly acknowledged.
6. Amount and kind of lien, name and address of lien holder must be given.
7. If purchased new have dealer complete Bill of Sale form on back of this application.
8. If purchased used, attach the Certificate of Title assigned to you by the seller.
9. Before accepting an assigned title, liens on face of title must be stamped paid and signed by lien holder or an authorized official.
10. Any changes, erasures, mutilations, ink eradications upon Bill of Sale, Certificate of Title, Certificate of Origin voids assignment and will not be accepted.

Print or Typewrite, Use Black Ink Only

I (We) acquired the above car Used on Oct. 27, 1947.

From Henry Green

Whose address is 2847 Washington Blvd., Chicago, Ill.

Have you operated this car in Illinois? No

Are you a licensed dealer in cars? No

When did you bring this car to Illinois?

Subscribed and sworn to before me this 31 day of October, 1947

(Seal)

Fred Klein, Notary Public

1606 W. 79th St.

(Stamped Certificate of Title Issued Nov 3 1947)

Mail Certificate of Title to Henry Greenspon

e/o Gen Del., Miami, Florida

9.00

Surrendered Title Number A 76717

Application for Certificate of Title Only

For Any Motor Vehicle, Trailer, or Semi-Trailer

Certificate of Title Fee 50c—Required by Law

Edward J. Barrett, Secretary of State

For Title Only

Batch # 1

For Title Only

Admitted and filed Feb. 10, 1949.

DEFENDANT'S EXHIBIT NO. 3

State of Florida  
Office of Motor Vehicle Commissioner  
Tallahassee

State of Florida :

County of Leon :

I, John Kilgore, Motor Vehicle Commissioner of the State of Florida, hereby certify the attached photostatic copies are true and correct copies of the records on State of Florida Certificate of Title # 2129701 A covering 1946 Lincoln Conv. Coupe, Engine # H 150200, Serial # H 150200 in the name of Paul G. Horvath, 368 NE 57th St., Miami, Florida and 1947 Florida Registration Card on license # 1W-19978 issued to Paul G. Horvath for use on the above vehicle. Also original application for Florida Title in name of Henry Greenspon on above vehicle and Illinois Title # A 98944 held in this office as proof of ownership, according to the copies on file and of record in my office.

Given under my hand and seal this 4th day of February, A.D. 1948.

John Kilgore  
Motor Vehicle Commissioner

Date Dec 18, 47

Transfer No. 99134

State of Florida  
Transfer of Motor Vehicle Registration  
License Tag Number 1W 19978

T. C. No. 2129701 A      Kind of Car Lincoln Conv Coupe  
Eng. No. H 150200      Model 56      Cyls 12  
Serial No.      Year Make 1946

Weight      Capacity  
Name of New Owner Paul G. Horvath  
Address 368 NE 57th St., Miami, Fla.  
Former Owner Henry Greenspon

Application for transfer of For Hire Certificate with remittance of \$1.00 is required on all For Hire tags. This is in addition to transfer of Title Certificate application.

ar  
Motor Vehicle Commissioner  
Tallahassee  
Florida

## Defendant's Exhibit No. 3—(Continued)

1947 Florida Automobile Registration Card 1947  
(This Is Not a Title Certificate)

Owner Henry Greenspon 1W19978

St. Address William Penn Hotel

County Dade City Miami Beach Florida

Make Lincoln Type Cont. Date 11/13/47

Eng. No. H150200 '46 Tag No. Ill. No. Cyls. 12

Weight 4116 Pass. Capacity T. C. No. AF. Ill.

Date Acquired 47 Year Make 46 Model 56

Serial No. Use pri. No. Wheels

Kind of Fuel Used (Gasoline, Diesel or other) gas

Amt. Sent With Appn. \$ XX 5.00 Additional Paid \$

Mail Plate To (Name & Address)

George H. Asbell,

Motor Vehicle Commissioner,

Tallahassee, Florida

25c Service Fee on Each Application

Appn. Number 393336

Cert. Number 2129701-A Tallahassee, Fla., Dec. 18, 1947

Satisfactory proof having been made under Chapter 9157, Acts of 1923, described is vested in the owner named below. This official Certificate of Title as follows:

Name and Make Lincoln Type Conv Coupe

Engine Number H150200 Model 56 Cyls.

Serial No. H150200 Year of Make 1946 Other des

Tag No.

Name: Paul G. Horvath

Address: 368 NE 57th St., Miami, Florida

(Stamped Mailed)

Florida License Plates Are Not Transferable From Car to Car

Defendant's Exhibit No. 3—(Continued)

Application No. 393336 Dec 18 47 Title Certif. No. 2129701

Combination Application for Duplicate and Transfer of  
Motor Vehicle Title Certificate

George H. Asbell,  
Motor Vehicle Commissioner, Tallahassee, Florida

Amount Sent With This Application \$1.50

99134 (in margin)

MO CR CT EO C BCK ✓ ACK

Former Owner Use This Column

The Certificate of Title covering the motor vehicle described below, now of record in my name has been lost or destroyed and I hereby apply for a duplicate and assign the same to :

Paul G. Horvath  
Address 368 N.E. 57th St.  
City & State Miami, Fla.

New Owner Use This Column

I hereby apply for the transfer to my name of Title Certificate covering the motor vehicle described below, subject to liens as below stated (if any) :

(Stamped Mailed Dec 18 1947 R.F.C. File)

Description of Car

Title Certif. No. App. for  
Make Lincoln Cont. Type Conv. Cpe  
Eng. No. H 150200 Serial No. H 150200  
Liens of Indebtedness: None

Signed: Henry Greenspon  
(Signature of Applicant for Duplicate)

Sworn to and subscribed before me this 22 day of November A.D., 1947.

(Affix Seal) Seal and /s/ [Indistinguishable]

Both Columns Above Must Be Signed and Attested.

Liens or Indebtedness: None  
(Stamped Dec 18 1947 O.K. Dec 18 1947)

Signed: (Signature of New Owner) Paul G. Horvath  
Address 368 NE 57 St, Miami

Sworn to and subscribed before me this 24 day of November A.D., 1947.

(Affix Seal) Seal and /s/ Maurice Arsenault.

Tag No. 1W 19978 162678

## Defendant's Exhibit No. 3—(Continued)

(Do Not Detach Here)

Application No. 547901 Dec. 18, 1947 Certificate No. 2129701

Certificate of Title Application

C MO CR CT EO BCK P BCK \$1.00

Name Henry Greenspon

Street No. or P.O. Box William Penn Hotel

Address: City or Town Miami Beach County Dade Florida

Geo. H. Asbell,

Motor Vehicle Commissioner, Tallahassee, Fla.

1. I (We) Henry Greenspon The owner (owners) of following described Motor Vehicle make application for Certificate of Title of Ownership for said vehicle and for that purpose state under oath the following facts:
2. Make Lincoln Type Conv. Cpe
3. Model Continental Cyls. 12 4. Year of Make 1946
5. Wheels 4 6. Eng. No. H 150200
7. Serial No. H 150200 8. Chasis No. —
9. Is the Motor Vehicle Licensed in your name? Yes
10. Tag No. Ill. 1W19978 1-717-938
11. I (We) acquired the above described Motor Vehicle 2nd Hand
12. From Individual
13. Whose address is Chicago, Ill.
14. The 27 day of Oct, 1946 15. How acquired Purchase  
(Stamped Dec 18 1947)

## Liens or Indebtedness

16. Amount at present time None 17, 18 blank
19. Signature of Applicant Henry Greenspon 156840
20. Signature of Person signing for Firm or Corporation
21. State of Florida County of Dade (Stamped R.F.C. File)

On this 12th day of November A.D., before me a Notary personally appeared Henry Greenspon who makes oath that the matters set forth in the foregoing application are true.

(Seals)

Mario Hernandez O.

(Affix Official Seal)

(Stamped Nov 26 1947 O.K. Dec 18 1947 O.K.)

My Commission Expires July 28, 1951.



Defendant's Exhibit No. 3—(Continued)

State of Illinois  
The Secretary of State  
Certificate of Title of a Motor Vehicle

I, Edward J. Barrett, Secretary of State of the State of Illinois, do hereby certify that application has been made to me for a certificate of title of a motor vehicle described as follows:

Name Henry Greenspon Title No. A 98944  
Street Address 1503 So. Komensky Ave.  
City or Town Chicago Zone 23 County Cook Illinois  
Name of Car Lincoln Cont., Style of Body Cab., Year Model 1946  
Factory No. H. 150200 Engine No. H. 150200 Horse Power 41.4  
Written Signature of Owner Henry\*Greenspon

This vehicle is subject to the following lien: None

Applicant has stated under oath that said applicant is the owner of said motor vehicle and that it is subject to the above liens and encumbrances and no others.

I do further certify that I have used reasonable diligence in ascertaining that the facts stated in said application for a certificate of title are true. Therefore, I certify that the above named applicant has been duly registered in my office as the lawful owner of the above described motor vehicle, and it appears upon the official records of my office that at the date of the issuance of this certificate said motor vehicle is subject to the liens hereinbefore enumerated.

In Witness Whereof, I have hereto affixed my signature and the Great Seal of the State of Illinois, at Springfield. Nov 3 1947

Edward J. Barrett, Secretary of State.

(Keep this Certificate of Title in a safe place. Do not accept title showing any erasures, alterations or mutilations)

To be filled in by seller and delivered with vehicle to the purchaser. Application for new certificate of title must be made and immediately forwarded to the Secretary of State with fee of 50c.

Assignment of Title

For Value Received I (We) Hereby Sell and Assign to  
(Questions unanswered here)

2129701

Signature Henry Greenspon, Seller

Mario Hernandez O., Notary Public

(Seal)

Re-Assignment by Dealer (form blank)

[Endorsed]: Filed Feb. 10, 1949.



[Title of District Court and Cause.]

### ORDER ON PRE-TRIAL CONFERENCE

The following is a record of the action taken at the pre-trial conference February 7, 1949, and February 10, 1949, including the amendments allowed to the pleadings and the agreements made by the parties:

1. Defendant's motion for leave to amend its answer, heretofore filed herein, is granted.

2. The court finds the following facts to be established by the record:

(a) Plaintiffs Louis P. Lutfy and Bertha A. Lutfy are husband and wife. Each of them is a citizen and resident of the State of Arizona. Defendant, The London Assurance, is a corporation duly organized and existing under the laws of the Kingdom of Great Britain and is a corporate subject and resident of said Kingdom;

(b) The amount in controversy in this suit exceeds the sum of three thousand dollars, exclusive of interest and costs.

3. The policy of insurance referred to in the plaintiffs' complaint is admitted in evidence as "Plaintiffs' Exhibit A."

4. The depositions of the plaintiffs (in one document) are admitted in evidence as "Defendant's Exhibit 1."

5. Photostatic copy of the record of the Secretary of State of the State of Illinois, relative to the automobile described in the insurance policy above referred to (eight documents bradded together) is admitted in evidence as "Defendant's Exhibit 2."

6. Photostatic copy of the record of the Motor Vehicle Commissioner of the State of Florida (six documents bradded together) is admitted in evidence as "Defendant's Exhibit 3."

7. The parties agree as to the following facts:

(a) The automobile described in the policy of insurance was actually a 1946 year model and manufactured during that year. It had an actual cash value of \$5,420.00 at all times here material.

(b) Defendant has made no payment to the plaintiffs. Defendant denies liability to the plaintiffs.

(c) Defendant raises no question as to the plaintiffs giving due or timely notice of claim, or of their tendering "proof of loss" to the defendant.

(d) Under date of February 4, 1948, defendant transmitted to the plaintiffs the letter set forth in the document denominated "tender" heretofore filed herein, and with such letter transmitted to the plaintiffs check #1413, drawn by J. A. Wamsley General Agency (general agent for the defendant at Phoenix, Arizona), upon the First National Bank of Arizona, in the sum of \$159.00.

Such check was retained by the plaintiffs, but not endorsed, cashed or otherwise disposed of by them. Plaintiffs' counsel, in open court and during this pre-trial conference, has returned such check to counsel for defendant. Under date of May 14, 1948, defendant filed herein said document denominated "tender," and deposited with the Clerk of this Court the sum of \$165.32 pursuant thereto. Such sum has not been withdrawn, in whole or in part, by either party hereto.

8. Plaintiffs move for judgment in their favor, upon the basis of this pre-trial order.

9. Defendant moves for judgment in its favor, upon the basis of this pre-trial order.

10. Each of such motions is by the court taken under advisement.

Done in Open Court this 10th day of February, 1949.

/s/ DAVE W. LING,  
United States District Judge.

Approved:

STRUCKMEYER & STRUCK-  
MEYER,  
Attorneys for Plaintiffs.

By /s/ JAMES A. STRUCKMEYER,  
KRAMER, MORRISON,  
ROCHE & PERRY,  
Attorneys for Defendant.

By /s/ ALLAN K. PERRY.

[Endorsed]: Filed Feb. 10, 1949.

[Title of District Court and Cause.]

### MEMORANDUM OF DECISION

The parties hereto having submitted, by stipulation, the issues in this matter to the Court and the Court having considered the pleadings herein, the depositions of the plaintiffs, and the exhibits introduced, the Court finds:

1. The defendant is a corporation qualified and permitted to write insurance upon automobiles in the State of Arizona.

2. On September 19, 1947, in Phoenix, Arizona, the defendant insured the plaintiffs against any loss arising from the theft of one certain automobile described as a 1947 Lincoln Continental Convertible Cabriolet, and received the premium for the said insurance.

3. The said automobile was insured under the policy in the amount of \$5,420.00 and the parties hereto have stipulated that on all dates to be considered by the Court the said automobile was of an actual value of \$5,420.00.

4. The equipment carried in the automobile was of a reasonable value of \$77.00.

5. On the 28th day of October, 1947, the said automobile was stolen from the possession of the plaintiffs and has not been recovered by the plaintiffs. On the date of the theft the policy was in full force and effect.

6. The plaintiffs have done and performed all

of the conditions of the insurance policy as required by them.

7. The defendant is obligated to the plaintiffs under the said policy in the following amounts:

- a. The principal sum of \$5,420.00.
- b. In the further sum of \$77.00 for equipment carried in the automobile.
- c. In the additional sum of \$150.00 for reasonable expenses incurred by the plaintiffs after the theft.

Each of the said sums to draw interest at the rate of 6% from the 28th day of November, 1947, until paid, and

It Is Further Ordered that judgment herewith be entered according to the terms of this Memorandum.

Dated this 25th day of February, 1949.

/s/ DAVE W. LING,  
Judge.

Approved as to Form this . . . . day of February, 1949.

KRAMER, MORRISON,  
ROCHE & PERRY,  
Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed Feb. 25, 1949.

In the United States District Court  
for the District of Arizona

Honorable Dave W. Ling, United States District  
Judge, Presiding.

[Title of Cause.]

MINUTE ENTRY OF TUESDAY,  
APRIL 12, 1949

It Is Ordered that the record show that the Court  
finds as follows herein:

The judgment in this case was improvidently  
entered and is vacated. The Court erroneously as-  
sumed that all issues raised by the pleadings were  
settled by admissions at pre-trial conference. This  
is not the fact.

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[Title of District Court and Cause.]

PLAINTIFF'S PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF LAW

Come now the plaintiffs herein and submit to the  
Court the attached Findings of Fact and Conclu-  
sions of Law in the above entitled matter.

STRUCKMEYER &  
STRUCKMEYER,

By /s/ JAMES A. STRUCKMEYER,  
Attorneys for Plaintiffs.



[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

The parties hereto having submitted by stipulation the issues in this matter to the Court upon a Motion for Judgment based upon a pre-trial order heretofore entered by this Court, and the Court having considered the pleadings herein, the depositions and the Exhibits, the Court finds:

1. Plaintiffs, Louis P. Lutfy and Bertha A. Lutfy, are husband and wife; each of them is a citizen and resident of the State of Arizona. Defendant, the London Assurance, is a corporate subject and resident of the Kingdom of Great Britain.

2. The amount in controversy exceeds the sum of Three Thousand Dollars, exclusive of interest and costs.

3. On September 19, 1947 defendant issued to plaintiffs a policy of insurance wherein and whereby defendant did, subject to all of the terms and conditions in said policy contained, agree to indemnify plaintiffs for a term commencing the nineteenth day of September, 1948, against loss or damage to the plaintiffs resulting directly from the theft of a certain Lincoln Continental Convertible Coupe, year model 1947, motor number H-150200, to the extent of the actual cash value of such automobile, or of the damage thereto resulting from theft as aforesaid, and as in the said policy defined, as of the day of the date of such loss or damage.

4. That at and prior to the issuance of said

policy of insurance, and as an inducement to the defendant to issue the same, the plaintiffs represented to the defendant:

(a) That the automobile for which such insurance was desired was of the year model 1947 and had been actually manufactured that year;

(b) That plaintiffs had purchased said automobile in September, 1947 and that said automobile was a new car when they had so purchased it;

(c) That plaintiffs had paid the sum of \$5,420.00 for such automobile;

(d) That plaintiffs were the sole and unconditional owners of said automobile.

5. Defendant believed such representations and each thereof, and relied upon them and relied upon each thereof, and issued said policy of insurance induced by and believing and relying upon said representations and each thereof.

6. Each of said representations was true, except that said automobile was of the year model 1946 and had been manufactured in that year. Plaintiffs however, believed that said automobile was a 1947 model, and manufactured that year, when they made said representation.

7. Defendant has heretofore tendered the return of the premium paid by the plaintiffs for said policy of insurance with lawful interest thereon.

8. On or about the 28th day of October, 1947, the said automobile was stolen from the possession of the plaintiffs and has not been recovered by the plaintiffs and the plaintiffs have thereby been permanently deprived of the use and enjoyment of said

motor vehicle which upon the date given above was of an agreed value of \$5,420.00.

9. The plaintiffs have done and performed all of the conditions of the insurance policy between the parties as required by them and the defendant has notified the plaintiffs that the defendant does not intend to pay and will not pay the liability incurred upon the said policy of insurance, and will pay nothing on account of said policy.

#### Conclusions of Law

1. The court has jurisdiction of the parties and of the subject matter of the action.

2. The plaintiffs are entitled to recover from the defendant upon the policy of insurance the admitted value of the automobile, to-wit, \$5,420.00.

Dated: December 6, 1949.

/s/ DAVE W. LING,  
Judge.

STRUCKMEYER &  
STRUCKMEYER,  
By /s/ JAMES A. STRUCKMEYER,  
Attorneys for Plaintiffs.

Receipt of copy acknowledged.

Plaintiffs' Proposed Findings of Facts and Conclusions of Law.

[Endorsed]: Filed Oct. 21, 1949.

Findings of Facts and Conclusions of Law.

[Endorsed]: Filed Dec. 6, 1949.

[Title of District Court and Cause.]

DEFENDANT'S OBJECTIONS TO FINDINGS  
OF FACT AND CONCLUSIONS OF LAW  
PROPOSED BY PLAINTIFFS

I.

The defendant objects to the plaintiffs' finding of fact number 6, for the reason (a) there is no evidence to support that portion of the finding reading as follows: "Each of said representations was true, \* \* \*," and (b) there is no evidence to support that portion of the finding reading, "Plaintiffs, however, believed that said automobile was a 1947 model, and manufactured that year, when they made said representation." Each of such quoted portions of said proposed finding is contrary to the evidence and the admissions of the parties.

II.

Defendant objects to the plaintiffs' proposed finding of fact number 8, for the reason that the same is contrary to the evidence and the admissions of the parties.

III.

The defendant objects to that portion of the plaintiffs' proposed finding of fact number 9, reading "The plaintiffs have done and performed all of the conditions of the insurance policy between the parties as required by them \* \* \*" for the reason

that the same is contrary to the evidence and the admissions of the parties.

#### IV.

The defendant objects to the plaintiffs' proposed conclusion of law number 2, for the reason that the same is contrary to the law applicable to the factual situation presented by the evidence and the admissions of the parties.

#### V.

Based upon the admissions of the parties and the evidence adduced at the pre-trial conference, the defendant is entitled to the following findings of fact (in addition to those proposed by the plaintiffs and to which no objection has been made):

1. That at and prior to the issuance of said policy of insurance, and as an inducement to the defendant to issue the same, the plaintiffs represented and warranted to the defendant:

(a) That the automobile for which such insurance was desired was of the year model 1947 and had been actually manufactured that year;

(b) That plaintiffs had purchased said automobile in September, 1947 and that said automobile was a new car when they had so purchased it;

(c) That plaintiffs had paid the sum of \$5,420.00 for such automobile;

(d) That plaintiffs were the sole and unconditional owners of said automobile, had good title thereto, and were lawfully in the possession of and entitled to the use of said automobile.

2. Defendant believed such representations and



warranties, and each thereof, and relied upon them and relied upon each thereof, and issued said policy of insurance induced by and believing and relying upon said representations and warranties, and each thereof.

3. Each and all of said representations and warranties so made by the plaintiffs to the defendant was false and fraudulent, and said plaintiffs, and each of them, knew at the time said representations and warranties were so made that they were fraudulent and untrue.

4. Each and all of said false and fraudulent representations and warranties were made by the plaintiffs with the design and purpose of deceiving and defrauding the defendant and of obtaining a contract of insurance to which the plaintiffs were not entitled.

5. Said automobile was not of the year 1947 and had not actually been manufactured that year, but was of the year model 1946 and had been manufactured that year, and these facts were known to the plaintiffs at the time of their false representations and warranties aforesaid.

6. Said automobile had not been purchased by the plaintiffs in September, 1947 and it was not a new car when they took possession of it, but the plaintiffs acquired the possession of said car after it had been owned, operated and used by sundry persons, and the plaintiffs had acquired the possession of said car from one Marcioni, who was not



the owner of said automobile, and these facts were known to the plaintiffs at the time of their false representations aforesaid.

7. Plaintiffs were not the sole owners of said automobile or the unconditional owners of said automobile, and they did not have good, or any, title thereto and they were not, nor was either of them, lawfully in the possession of said automobile or entitled to the use thereof, and these facts were known to the plaintiffs at the time of their false representations and warranties aforesaid.

8. When said policy of insurance was so applied for by the plaintiffs and issued by the defendant, there was a chattel mortgage lien upon said motor vehicle in favor of the Exchange National Bank, Chicago, Illinois and this fact was by the plaintiffs willfully concealed and withheld from the knowledge of the defendant.

9. When said policy of insurance was so applied for by the plaintiffs and issued by the defendant, plaintiffs well knew they had acquired the possession of said car within the State of Illinois, that said car was then registered within the State of Illinois, and that the plaintiffs did not surrender to the Motor Vehicle Division of the Arizona State Highway Department the number plates assigned to such vehicle in Illinois, nor did they surrender the Illinois registration card or the Illinois certificate of title, nor did they furnish any evidence of ownership or right to possession in the plaintiffs, but the said plaintiffs did remove certain Arizona license plates from another motor vehicle and did place

the same upon the automobile described in the policy of insurance here sued upon and did operate and drive said automobile within the State of Arizona with said license number plates affixed thereto that had been by plaintiffs removed from such other motor vehicle, and the plaintiffs willfully concealed each and all of such facts from the defendant.

VI.

Based upon the admissions of the parties and the evidence adduced at the pre-trial conference, the court should conclude as a matter of law that the policy of insurance sued upon is void ab initio, because of the false and fraudulent representations and concealment of and by the plaintiffs.

KRAMER, MORRISON,  
ROCHE & PERRY,  
Attorneys for Defendant,  
By /s/ ALLAN K. PERRY.

Receipt of copy acknowledged.

[Endorsed]: Filed Oct. 24, 1949.

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[Title of District Court and Cause.]

CIVIL DOCKET

1949

Dec. 6—Enter judgment for the plaintiffs Louis P. Lutfy and Bertha A. Lutfy, husband and wife against defendant The London Assurance, a corporation in the sum of \$5,420.00.

[Title of District Court and Cause.]

## DEFENDANT'S MOTION FOR NEW TRIAL

The defendant moves the court to vacate the judgment rendered December 6, 1949 in the above numbered and entitled action and to grant a new trial of said cause, for the following reasons and upon the following grounds:

### I.

Such judgment is not justified by, or supported by, and is contrary to:

- (a) The admissions of the parties; and
- (b) The evidence received at the pre-trial conference.

### II.

Such judgment is not justified by, or supported by, and is contrary to the matters determined at such pre-trial conference and the "Order on Pre-trial Conference" heretofore entered herein.

### III.

Such judgment is contrary to the law applicable to the factual situation established.

### IV.

For all of the reasons set forth in the "Defendant's Objections to Findings of Fact and Conclusions of Law Proposed by Plaintiffs," filed herein

October 22, 1949, which is hereby referred to and made a part of this motion for new trial.

KRAMER, MORRISON,  
ROCHE & PERRY,  
By /s/ ALLAN K. PERRY.  
Attorneys for Defendant.

[Endorsed]: Filed Dec. 6, 1949.

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In the United States District Court  
for the District of Arizona

Honorable Dave W. Ling, United States District  
Judge, Presiding.

[Title of Cause.]

MINUTE ENTRY OF WEDNESDAY,  
DECEMBER 14, 1949

It Is Ordered that the Defendant's Motion for  
New Trial be and it is denied.

(Docketed December 14, 1949.)

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[Title of District Court and Cause.]

DEFENDANT'S NOTICE OF APPEAL

Notice Is Hereby Given that the defendant above  
named hereby appeals to the United States Court

of Appeals for the Ninth Circuit, from the judgment of the United States District Court for the District of Arizona rendered and entered December 6, 1949 and from the whole of said judgment, and from the order of said District Court entered December 14, 1949 denying the defendant's motion for new trial.

KRAMER, MORRISON,  
ROCHE & PERRY,  
By /s/ ALLAN K. PERRY.  
Attorneys for Defendant,

[Endorsed]: Filed Dec. 22, 1949.

[Title of District Court and Cause.]

### SUPERSEDEAS BOND ON APPEAL

Know All Men By These Presents:

That The London Assurance, a corporation duly organized and existing under and by virtue of the laws of the Kingdom of Great Britain, as principal obligor, the Fidelity and Deposit Company of Maryland, a corporation organized and existing under and by virtue of the laws of the State of Maryland, and authorized to become and be sole surety upon bonds required in the courts of the United States, as surety, are held and firmly bound unto Louis P. Lutfy and Bertha A. Lutfy in the penal sum of Six Thousand Five Hundred Dollars, for the pay-

ment of which said sum well and truly to be made said principal and surety bind themselves, and their respective successors, jointly and severally, firmly by these presents.

The condition of this obligation is such that,

Whereas, under date of December 6, 1949, a judgment was rendered and entered in the above numbered and entitled action in favor of the plaintiffs therein, the obligees in this bond, and against the defendant, the principal obligor hereon, wherein and whereby it was ordered, adjudged and decreed that said plaintiffs do have and recover of and from said defendant the principal sum of five thousand four hundred twenty dollars, with interest thereon at the rate of six per cent (6%) per annum from the date of said judgment, and for plaintiffs' costs, and thereafter and on the 14th day of December, 1949 an order was entered in said court and cause, denying said plaintiffs' motion for new trial and the principal obligor hereon is appealing to the United States Court of Appeals for the Ninth Circuit from said judgment and order, and desires to stay the execution of said judgment, pending such appeal.

Therefore, if said principal obligor shall satisfy said judgment in full, together with costs, interest and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and shall satisfy in full such modifications of the judgment and such costs, interests and damages as the appellate court may adjudge and award, then this obliga-



tion shall be void, otherwise to remain in full force, effect and virtue.

Witness the corporate name of the principal obligor, by its duly authorized general agent, and the corporate name and seal of the surety, by its duly authorized attorney-in-fact, this 21st day of December, 1949.

THE LONDON ASSURANCE,

By /s/ J. A. WAMSLEY,  
General Agent.

FIDELITY AND DEPOSIT  
COMPANY OF MARYLAND,

By /s/ C. A. DRUMMOND,  
Its Attorney-in-Fact.

Approved December 22, 1949.

/s/ DAVE W. LING,  
U. S. District Judge.

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[Title of District Court and Cause.]

CLERK'S CERTIFICATE TO RECORD  
ON APPEAL

United States of America,  
District of Arizona—ss:

I, William H. Loveless, Clerk of the United States District Court for the District of Arizona, do hereby certify that I am the custodian of the records, papers and files of the said Court, including the

records, papers and files in the case of Louis P. Lutfy and Bertha A. Lutfy, husband and wife, Plaintiffs, vs. The London Assurance, a corporation, Defendant, numbered Civ-1173 Phoenix, on the docket of said Court.

I further certify that the attached and foregoing original documents bearing the endorsements of filing thereon are the original documents filed in said case, and that the attached and foregoing copies of the minute and civil docket entries are true and correct copies of the originals thereof remaining in my office in the city of Phoenix, State and District aforesaid.

I further certify that said original documents, and said copies of the minute and civil docket entries, constitute the entire record in said case, as designated in the Appellant's Designation filed therein and made a part of the record attached hereto, and the same are as follows, to-wit:

1. Transcript on Removal, filed May 7, 1948;
2. Notice of filing transcript on removal, filed May 11, 1948;
3. Answer, filed May 11, 1948;
4. Tender, filed May 14, 1948;
5. Motion to Set for Trial, filed October 13, 1948;
6. Minute entry of October 25, 1948 (Order setting case for trial)
7. Defendant's Motion for Leave to Amend its Answer, filed February 5, 1949;
8. Minute entry of February 7, 1949 (pre-trial conference and order granting motion for leave to amend answer, and vacating trial setting)

9. Amended Answer, filed February 8, 1949;
10. Minute entry of February 10, 1949 (further pre-trial conference)
11. Plaintiffs' Exhibit A in evidence (insurance policy), filed February 7, 1949;
12. Defendant's Exhibit 1 in evidence (depositions of Dr. Louis P. Lutfy and Bertha A. Lutfy), filed February 10, 1949;
13. Defendant's Exhibit 2 in evidence (transcript of record from the Secretary of State of the State of Illinois), filed February 10, 1949;
14. Defendant's Exhibit 3 in evidence (transcript of record from office of Motor Vehicle Commissioner of the State of Florida), filed February 10, 1949;
15. Order on Pre-Trial Conference, filed February 10, 1949;
16. Minute entry of February 15, 1949 (Order granting Plaintiff's motion for judgment)
17. Memorandum of Decision, filed February 25, 1949;
18. Defendant's Motion for New Trial, filed February 28, 1949;
19. Minute entry of March 21, 1949 (Hearing on and submission of motion for new trial);
20. Minute entry of April 12, 1949 (Order vacating judgment);
21. Defendant's Objections to Findings of Fact and Conclusions of Law Proposed by Plaintiffs, filed October 24, 1949;
22. Minute entry of December 6, 1949 (Hearing on Proposed Findings of Fact and Conclusions of

Law, order approving same and order directing entry of judgment.

23. Plaintiffs' Proposed Findings of Fact and Conclusions of Law, filed October 21, 1949 and (being the same as) Findings of Fact and Conclusions of Law signed by the Court and filed December 6, 1949;

24. Clerk's Civil Docket entry of December 6, 1949, the same being the Clerk's notation of the judgment in the civil docket pursuant to order of December 6, 1949, and Rules 58 and 79 (a).

25. Defendant's Motion for New Trial, filed December 6, 1949.

26. Minute entry of December 14, 1949 (Order Denying Motion for New Trial) docketed December 14, 1949.

27. Defendant's Notice of Appeal, filed December 22, 1949.

28. Supersedeas Bond On Appeal, filed December 22, 1949.

29. Designation Of Contents Of Record On Appeal, filed December 22, 1949.

I further certify that the Clerk's fee for preparing and certifying this said record on appeal amounts to the sum of \$3.20 and that said sum has been paid to me by counsel for the appellants.

Witness my hand and the seal of said Court this 12th day of January, 1950.

[Seal] /s/ WM. H. LOVELESS,  
Clerk.

[Endorsed]: No. 12454. United States Court of Appeals for the Ninth Circuit. The London Assurance, a corporation, Appellant, vs. Louis P. Lutfy and Bertha A. Lutfy, husband and wife, Appellees. Transcript of Record. Appeal from the United States District Court for the District of Arizona.

Filed January 16, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

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In the United States Court of Appeals  
for the Ninth Circuit

No. 12454

THE LONDON ASSURANCE, a corporation,  
Appellant,

vs.

LOUIS P. LUTFY, et ux,

Appellees.

CONCISE STATEMENT OF THE POINTS ON  
WHICH DEFENDANT-APPELLANT IN-  
TENDS TO RELY ON APPEAL

Comes now the Defendant-Appellant herein, The London Assurance, a corporation, and makes the following Concise Statement of the points upon



which it intends to rely for an Appeal to the United States Circuit Court of Appeals from the final judgment made in the above entitled cause:

1. Such judgment is not justified by, or supported by, and is contrary to: (a) The admissions of the parties; and (b) The evidence received at the pre-trial conference.

2. Such judgment is not justified by, or supported by, and is contrary to the matters determined at such pre-trial conference and the "Order on Pre-trial Conference" heretofore entered herein.

3. Such judgment is contrary to the law applicable to the factual situation established.

4. There is no evidence or admission to support that portion of the judgment awarding the plaintiffs "\$77.00 for equipment carried in the automobile."

5. There is no evidence or admission to support that portion of the judgment awarding the plaintiffs "\$150.00 for reasonable expenses incurred by the plaintiffs after the theft."

6. There is neither evidence, admission nor law, to support the award of "interest at the rate of 6% per annum from the 28th day of November, 1947, until paid."

7. That the judgment is contrary to the evidence in that the admissions and evidence received at the pre-trial conference show that plaintiffs made representations and warranties of material facts relied upon by defendant, and each and all of said representations and warranties were false and fraudulent and were made for the purpose of deceiving and



defrauding the defendant and obtaining a policy and contract of insurance to which plaintiffs were not entitled.

8. That the judgment is contrary to the evidence in that the said automobile was not of the year model 1947 as represented and such fact was known to the plaintiffs at the time of their false representations and warranties, and such representation was of a material fact and thereby voided the insurance policy.

9. That judgment is contrary to the evidence in that the evidence shows that the plaintiffs were not the sole owners of the automobile, nor were they the unconditional owners of the said automobile, and that they did not have good or clear title thereto, and that these facts were known to the plaintiffs at the time of their false representations and warranties made to the defendant.

10. That the judgment is contrary to the evidence in that the evidence and admissions shows that plaintiffs concealed material facts from defendant at the time of the issuance of said policy.

11. That the judgment is contrary to the evidence in that the evidence shows that the plaintiffs concealed from the defendant, at the time the policy of insurance was issued, that the said automobile was then registered within the State of Illinois and that the plaintiffs did not surrender to the Motor Vehicle Division of the State of Arizona Highway Department the number plates assigned to such vehicle in Illinois, nor did they surrender the Illinois

registration card nor the Illinois Certificate of Title, nor did they furnish any evidence of ownership or right of possession in the plaintiffs.

12. That the judgment is contrary to the evidence in that at the time the said policy of insurance was applied for, the evidence shows that the plaintiffs concealed from the defendant the fact that they intended to and did remove certain Arizona License Plates from another vehicle registered in the State of Arizona and did thereafter place the said Arizona License Plates upon the car described in the insurance policy, and thereafter did operate and drive said car within the State of Arizona with the false license plates taken from the other motor vehicle affixed to the motor vehicle described in said insurance policy, and wilfully concealed all of said material facts from the defendant.

13. That the judgment is contrary to the evidence in that there is no evidence that the automobile was stolen from the plaintiffs.

14. That the judgment is contrary to the evidence and law in that there is no evidence or admissions that the plaintiffs had any insurable interest in the automobile at the time of the issuance of the policy or thereafter.

15. That the Judgment is contrary to the evidence and law in that the evidence and admissions shows that the title to the said automobile was in a third party at the time of the issuance of the insurance policy and at the time of the alleged theft and never was in the plaintiffs or either of them.

16. That the judgment is contrary to the evidence and the law in that the evidence shows that the plaintiffs failed to perfect their title to said automobile and failed to execute and deliver instruments and papers to the defendant after loss, defeating the company's right of subrogation to recover against other persons as provided in the said policy of insurance.

17. That judgment is contrary to the evidence and the law in that the evidence shows that when the policy of insurance was applied for by the plaintiffs and issued by the defendant, there was a Chattel Mortgage Lien upon said motor vehicle in favor of the Exchange National Bank, Chicago, Illinois. That this material fact was by the plaintiffs wilfully concealed and withheld from the knowledge of the defendant.

18. That the Court erred in granting the plaintiffs' Motion for Judgment in their favor on the basis of the pre-trial order.

19. That the Court erred in not granting the defendant's Motion for Judgment in its favor on the basis of the pre-trial order.

Dated: January 24, 1950.

/s/ WILLIAM A. WHITE,

/s/ EDWARD A. BARRY,

Attorneys for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed Jan. 24, 1950.

[Title of Court of Appeals and Cause.]

## DESIGNATION OF RECORD

Notice is hereby given to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit that the following items selected from the certification of the Clerk of the District Court as the record on appeal are selected as that portion of the record, proceedings and evidence to be relied upon by Appellant as the Contents of Record on Appeal:

1. Transcript on Removal, filed May 7, 1948.
9. Amended Answer, filed February 8, 1949.
10. Minute Entry of February 10, 1949 (further pre-trial conference).
11. Plaintiffs' Exhibit "A" in Evidence (Insurance Policy), filed February 7, 1949.
12. Defendant's Exhibit 1 in Evidence (Deposition of Dr. Louis P. Lutfy and Bertha A. Lutfy), filed February 10, 1949.
13. Defendant's Exhibit 2 in Evidence (Transcript of record from Secretary of State of the State of Illinois), filed February 10, 1949.
14. Defendant's Exhibit 3 in Evidence (Transcript of record from Office of Motor Vehicle Commissioner of the State of Florida), filed February 10, 1949.
17. Memorandum of Decision, filed February 25, 1949.
20. Minute Entry, April 12, 1949 (Order vacating judgment).
21. Defendant's objections of findings of fact

and conclusions of law proposed by plaintiffs, filed October 24, 1949.

22. Minute Entry of December 6, 1949 (Hearing on Proposed Findings of Fact and Conclusions of Law, Order approving same, and Order Directing Entry of Judgment).

23. Plaintiffs' proposed Findings of Fact and Conclusions of Law, filed October 21, 1949, and (being the same as) Findings of Fact and Conclusions of Law signed by Court and filed December 6, 1949.

24. Clerk's Civil Entry of December 6, 1949, the same being the Clerk's notation of the judgment in the Civil Docket pursuant to Order of December 6, 1949, and Rule 58 and 79(a).

25. Defendant's Motion for New Trial, filed December 6, 1949.

26. Minute Entry of December 14, 1949 (Order Denying Motion for New Trial, docketed December 14, 1949).

27. Defendant's Notice of Appeal, filed December 22, 1949.

28. Supersedeas bond on appeal, filed December 22, 1949.

15. Order on Pre-Trial Conference, filed February 10, 1949.

Dated: January 24, 1950.

/s/ WILLIAM A. WHITE,  
/s/ EDWARD A. BARRY,  
Attorneys for Appellant.